Supreme Court, U.S.
FILED
NOV 23 2015
OFFICE OF THE CLERK

No. 14-1382

In The Supreme Court of the United States

AMERICOLD LOGISTICS, LLC and
AMERICOLD REALTY TRUST,

Petitioners,

v.

CONAGRA FOODS, INC. and SWIFT-ECKRICH, INC.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

JOINT APPENDIX

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Petition For Certiorari Filed May 15, 2015
Certiorari Granted October 1, 2015

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APPEAL

U.S. District Court
DISTRICT OF KANSAS (Kansas City)
CIVIL DOCKET FOR CASE
#: 2:13-cv-02064-JWL-KGS

Conagra Foods, Inc. et al v. Americold Logistics, LLC et al
Assigned to: District Judge John W. Lungstrum
Referred to: Magistrate Judge K. Gary Sebelius
Demand: $999,000
Case in other court: District Court of Wyandotte County, Kansas, 12-CV-1428 10CCA, 13-03277
Cause: 28:1441 Petition for Removal – Breach of Contract

Date Filed: 02/07/2013
Date Terminated: 10/04/2013
Jury Demand: Defendant
Nature of Suit: 190 Contract: Other
Jurisdiction: Federal Question

Date Filed	#	Docket Text
02/07/2013	1	NOTICE OF REMOVAL from District Court of Wyandotte County, Kansas, case number 12-CV-1428, filed by Americold Realty Trust, Americold Logistics, LLC. (Attachments: # 1 State Court Records, # 2 Exhibit B) (ta) (Entered: 02/07/2013)
03/04/2013	7	STATE COURT RECORDS from District Court of Wyandotte County, Kansas. (Attachments: #1 Exhibit A)(Pospisil, Michael) (Entered: 03/04/2013)

07/24/2013	30	STIPULATION of Facts by Conagra Foods, Inc., Swift – Eckrich, Inc. (Attachments: # 1 Exhibit A to Stipulation of Facts, # 2 Exhibit B to Stipulation of Facts, # 3 Exhibit C to Stipulation of Facts)(Anliker, Deron) (Entered: 07/24/2013)
07/24/2013	31	INDEX OF EXHIBITS by Plaintiffs Conagra Foods, Inc., Swift – Eckrich, Inc. re: 30 Stipulation. (Anliker, Deron) (Entered: 07/24/2013)
10/04/2013	44	MEMORANDUM AND ORDER granting 35 Defendants' Motion for Summary Judgment and denying 37 Plaintiffs' Motion for Summary Judgment. Signed by District Judge John W. Lungstrum on 10/4/2013. (ses) (Entered: 10/04/2013)
10/04/2013	45	JUDGMENT pursuant to the Memorandum and Order filed on October 4, 2013. Signed by District Judge John W. Lungstrum on 10/4/2013. (mm) (Entered: 10/04/2013)
11/04/2013	46	NOTICE OF APPEAL as to 45 Judgment, 44 Order on Motion for Summary Judgment, by Plaintiffs Conagra Foods, Inc., Swift-Eckrich, Inc. Filing fee $455, Internet Payment Receipt Number 1083-2888953. (Anliker, Deron) (Entered: 11/04/2013)
07/04/2015	54	MOTION for Relief From Judgment Pursuant to Fed. R. Civ. P. 60(b)(4) by

		Plaintiffs Kraft Foodservice, Inc., Safeway, Inc. (Gotfredson, William) (Motion title modified on 7/6/2015. (mg)) (Entered: 07/04/2015)
07/17/2015	55	RESPONSE/OPPOSITION by Defendants Americold Logistics, LLC, Americold Realty Trust re: 54 MOTION for Relief From Judgment Pursuant to Fed. R. Civ. P. 60(b)(4). (Pospisil, Michael) (Entered: 07/17/2015)
08/21/2015	56	MEMORANDUM AND ORDER – Plaintiff Kraft Foodservice, Inc. and Safeway, Inc.'s motion for relief from judgment 54 is dismissed without prejudice. Signed by District Judge John W. Lungstrum on 08/21/2015. (ses) (Entered: 08/21/2015)

General Docket
Tenth Circuit Court of Appeals

Court of Appeals Docket #: 13-3277 **Docketed:** 11/05/2013 **Termed:** 01/27/2015
Nature of Suit:
3190 Other Contract Actions
Conagra Foods, et al v.
Americold Logistics, et al
Appeal From: United States District Court for the District of Kansas – Kansas City
Fee Status: Fee Paid

10/07/2014 [10213411] Order filed by Clerk of the Court (CW) – At the direction of the panel of judges who will hear and decide the merits of this appeal. Supplemental brief due 10/17/2014 for Appellees Americold Logistics, LLC and Americold Realty Trust (please see order for further details). The supplemental brief shall be no longer than 20 pages in a 13-point font, and should be filed via the court's ECF system. No hard copies need be filed. The appellant may file a response brief not exceeding 20 pages within 7 days of service of the supplemental brief. Served on 10/07/2014. [13-3277]

10/17/2014 [10216106] Appellee/Respondent's supplemental brief filed by Americold Logistics, LLC and Americold Realty Trust. No paper copies to be provided to the court (per order). Served on 10/17/2014. Manner of Service: email. This pleading

	complies with all required (privacy, paper copy and virus) certifications: Yes. [13-3277] – [Edited number of copies 10/17/2014 by SLS.] MDP
10/24/2014	[10218297] Appellant/Petitioner's supplemental brief filed by Conagra Foods, Inc. and Swift-Eckrich, Inc.. Served on 10/24/2014. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [13-3277] [Edited to reflect proper relief – Edited 10/24/2014 by NA] DAA
11/19/2014	[10225716] Case argued by John Duggan for the Appellant; Michael Pospisil for the Appellee; and submitted to Judges Lucero, Murphy and McHugh. [13-3277]
01/27/2015	[10242913] Remanded; Terminated on the merits after oral hearing; Written, signed, published; Judges Lucero, Murphy (authoring) and McHugh. Mandate to issue. [13-3277] – [Edited by SLS to note that an amended decision was issued on 04/09/2015 nunc pro tunc 01/27/2015.]
01/27/2015	[10242919] Judgment for opinion filed. [13-3277]
02/09/2015	[10246595] Petition filed by Appellees Americold Logistics, LLC and Americold Realty Trust for rehearing en banc. Served on: 02/09/2015. Manner of service: email. This pleading complies with all required (privacy, paper copy and

virus) certifications: Yes. [13-3277] [Edited to reflect proper relief and to add native PDF – Edited 02/09/2015 by NA] MDP

02/09/2015 [10246709] Petition for rehearing filed by Americold Realty Trust. Served on 02/09/2015. Manner of Service: email. [13-3277] [Procedural entry

02/23/2015 [10250042] Order filed by Judges Lucero, Murphy and McHugh denying petition for rehearing and for rehearing en banc filed by Appellees Americold Logistics, LLC and Americold Realty Trust. [13-3277]

03/23/2015 [10257500] Order filed by Judges Lucero, Murphy and McHugh granting appellees' motion staying issuance of the mandate until 06/22/2015. If a notice from the Supreme Court clerk is filed during the stay period indicating appellees have filed a petition for certiorari, the stay will continue until the Supreme Court's final disposition. Served on 03/23/2015. [13-3277]

04/09/2015 [10262654] Published order filed by Judges Lucero, Murphy and McHugh sua sponte to amend the opinion issued on 01/27/2015. A copy of the new opinion is attached. Issuance of the mandate is stayed as directed in the order of 03/23/2015. [13-3277] – [Edited 04/09/2015 by JM to correct event code.]

04/09/2015	[10262655] Amendment to opinion pursuant to [10262654-2] order filed by Judges Lucero, Murphy and McHugh. [13-3277]
05/26/2015	[10274384] Petition for writ of certiorari filed by Americold Logistics on 05/15/2015 and placed on the docket 05/22/2015 as Supreme Court Number 14-1382. [13-3277]
10/01/2015	[10307022] Supreme court order dated 10/01/2015 granting certiorari filed. [13-3277]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

CONAGRA FOODS, INC. F/K/A CONAGRA, INC. and SWIFT-ECKRICH, INC. and KRAFT FOODSERVICE, INC. and SAFEWAY, INC. and PHILLIPS CONNECTIONS, INC. D/B/A PHILLIPS CONNECTIONS AND HANOVER, INC. Plaintiffs, v. AMERICOLD LOGISTICS, LLC and AMERICOLD REALTY TRUST Defendants.	Case No. 13-cv-2064 RDR/KGS

DEFENDANTS' NOTICE OF REMOVAL

(Filed Feb. 7, 2013)

COMES NOW Defendants Americold Logistics, LLC and Americold Realty Trust (collectively "Defendants"), by and through its counsel of record, and

pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, and D.Kan. Rule 81.1(a), hereby remove this case from the District Court of Wyandotte County, Kansas, to the United States District Court of Kansas. As grounds for removal, and for no other purpose, Defendants state as follows:

1. On or about September 24, 2012, Plaintiffs commenced this action against Defendants in the District Court of Wyandotte County, Kansas styled *ConAgra Foods, Inc., et al. v. Americold Logistics, LLC, et al.* Case No. 12-CV-1428.

2. Plaintiffs served Americold Logistics, LLC on January 13, 2013 and Americold Realty Trust on January 22, 2013.

3. Plaintiffs' Petition seeks tens of millions of dollars in damages. *See* Petition, p. 20.

4. Plaintiffs are all incorporated in the State of Delaware. *See* Petition at ¶¶ 1-5.

5. Americold Realty Trust is a Maryland real estate investment trust. *See* Petition at ¶ 6.

6. None of the Plaintiffs are incorporated in or have their principal place of business in Maryland. *See* Petition at ¶¶ 1-5.

7. Americold Logistics, LLC is a limited liability company. It is well-settled law that, for purposes of diversity jurisdiction, a limited liability company is treated as a limited partnership. The citizen of a limited partnership "is deemed to be that of the persons

composing such association." *Kalian at Poconos, LLC v. Saw Creek Estates Community Association, Inc., et al.*, 275 F.Supp.2d 578, 586 (M.D. Pa., 2003) (quoting *Pippett v. Waterford Dev., LLC*, 166 F.Supp.2d 233, 236, (E.D.pa., 2001); *See Carden v. Arkoma, Assocs.*, 494 U.S. 185, 187-92, 110 S.Ct. 1015 (1990) (holding that only corporations, and not other business entities such a [sic] limited partnerships, are considered citizens of the state which created it).

8. Americold Logistics, LLC is a wholly owned subsidiary of Americold Realty Trust. *See* Petition at ¶ 57.

9. As such, its state of citizenship is also that of Maryland.

10. Neither Americold Logistics, LLC nor Americold Realty Trust is a citizen of Kansas, the forum state.

11. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1332 in that this action is between the citizens of different States, and the amount of controversy is in the excess of $75,000. *See* Petition at p. 20. The Petition demonstrates that this Court has original jurisdiction, by virtue of diversity.

12. This Notice of Removal is timely under 28 U.S.C. § 1446(b). It is being filed within 30 days of service of process on Defendants. The time within which to answer or otherwise respond to Plaintiffs' Petition has not expired, and no further proceedings have taken place in the state court lawsuit.

13. Venue is proper because Plaintiffs' state court action is pending within a Kansas Judicial District within the geographic confines of this District. 28 U.S.C. § 1441(a).

14. Pursuant to 28 U.S.C. § 1446(a), attached hereto as *Exhibit A* and incorporated by references are copies of the Summons and Petition, which constitute all process, pleadings, and orders in this matter. Pursuant to D. Kan. Rule 81.2, Defendants will file a copy of all records and proceedings – if any – had in state court with this Court within 21 days of removal.

15. Defendants shall, promptly upon filing this Notice of Removal, give written notice thereof to Plaintiffs and file a copy of this Notice of Removal with the District Court of Wyandotte County, Kansas, as required by 28 U.S.C. § 1446(d) and D. Kan. Rule 81.1(c). A copy of the Notice of Filing Notice of Removal (without attachments) is incorporated herein and attached hereto as *Exhibit B.*

WHEREFORE, Defendants hereby exercises [sic] their right of removal pursuant to 28 U.S.C. § 1441 *et seq.* and give notice that the action now pending in the District Court of Wyandotte County, Kansas, captioned *ConAgra Foods, Inc., et al. v. Americold Logistics, LLC, et al.* Case No. 12-CV-1428, is removed from that court to the United States District Court for the District of Kansas. Defendants respectfully requests [sic] that this Court assume full jurisdiction over the cause herein as provided by law.

Dated this 7th day of February, 2013.

Respectfully submitted,

EDGAR LAW FIRM LLC

/s/ Michael D. Pospisil

Michael D. Pospisil KS # 18540
John M. Edgar KS FED #70270
Edgar Law Firm LLC
1032 Pennsylvania Ave.
Kansas City, Missouri 64105
Telephone: (816) 531-0033
Facsimile: (816) 531-3322
Email: jme@edgarlawfirm.com
Email: mdp@edgarlawfirm.com

ATTORNEYS FOR DEFENDANTS

[Certificate Of Service Omitted]

EXHIBIT A

[LOGO] CT Corporation

Service of Process Transmittal
01/17/2013
CT Log Number 521963316

TO: Annie McCrory, Contract Administrator
AmeriCold Logistics LLC
10 Glenlake Parkway South, Suite 800
Atlanta, GA 30328-

RE: **Process Served in Kansas**

FOR: Americold Logistics, LLC (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Conagra Foods, Inc., etc., et al., Pltfs. vs. Americold Logistics, LLC and Americold Realty Trust, Dfts.

DOCUMENT(S) SERVED:
Summons, Petition, Exhibit(s)

COURT/AGENCY: Johnson County District Court, KS
Case # 12CV1428

NATURE OF ACTION: Defendant failed to perform under the agreement and refused to execute stipulations of revivor as required by the agreement

ON WHOM PROCESS WAS SERVED:
The Corporation Company, Inc., Topeka, KS

DATE AND HOUR OF SERVICE:
By Certified Mail on
01/17/2013 postmarked on
01/16/2013

JURISDICTION SERVED:
Kansas

APPEARANCE OR ANSWER DUE:
Within 21 days after service,
exclusive of the day of service

ATTORNEY(S)/SENDER(S):
Deron A. Anilker
Duggan, Shadwick, Doerr &
Kurlbaum, P.C.
11040 Oakmont
Overland Park, KS 66210
913-498-3536

ACTION ITEMS:
SOP Papers with Transmittal,
via Fed Ex 2 Day,
794538346824
Email Notification,
Annie McCrory
annie.mccrory@americold.com

SIGNED: The Corporation Company, Inc.
PER: Amy McLaren
ADDRESS: 112 S.W. 7th Street
Suite 3C
Topeka, KS 66603

TELEPHONE: 800-592-9023

[/s/ D Deckbar
1/18/13]

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Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

IN THE DISTRICT COURT
OF JOHNSON COUNTY
CIVIL COURT DEPARTMENT

CONAGRA FOODS, INC. F/K/A CONAGRA, INC.,	)	
Plaintiffs,	)	**Case No. 12CV1428**
v.	)	**Court No. 3**
	)	**K.S.A. Chapter 60**
AMERICOLD LOGISTICS, LLC,	)	
Defendants.	)	

SUMMONS

To the Defendant: **Americold Logistics, LLC**
c/o The Corporation Company
112 SW 7th Street, Ste. 3C
Topeka, Kansas 66603

You are hereby notified that an action has been commenced against you in this court. You are required to file your answer to the Petition with this court and serve a copy upon the plaintiff's attorney as follows:

Deron A. Anliker
Duggan, Shadwick, Doerr & Kurlbaum, P.C.
11040 Oakmont
Overland Park, Kansas 66210
(913) 498-3536

within twenty-one (21) days after service of this summons upon you, exclusive of the day of service.

If you fail to do so, judgment by default will be taken against you for the relief demanded in the attached petition. As provided in subsection (a) of K.S.A. 60-213, and amendments thereto, your answer must state as a counterclaim any related claim which you may have against the plaintiff, or you will thereafter be barred from making such claim in any other action.

KATHLEEN M. COLLINS
Clerk of the District Court

(Seal)

Dated: 9-25-12

By /s/ [Illegible]

[LOGO] CT Corporation

Service of Process Transmittal
01/22/2013
CT Log Number
521983016

TO: Annie McCrory, Contract Administrator
AmeriCold Logistics LLC
10 Glenlake Parkway South, Suite 800
Atlanta, GA 30328-

RE: **Process Served in Kansas**

FOR: Americold Realty Trust (Domestic State: MD)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Conagra Foods, Inc., etc., et al., Pltfs. vs. Americold Logistics, LLC and Americold Realty Trust, Dfts.

DOCUMENT(S) SERVED:
Summons, Petition, Exhibit(s), Attachment(s)

COURT/AGENCY: Johnson County District Civil Court Department, Case # 12CV14283

NATURE OF ACTION:
Breach of Contract – Specific Performance – Plaintiff made demand on Americold to execute stipulation of revivor consistent with K.S.A. 60-2404, but Americold refused and continues to refuse to perform under the terms of the agreement by refusing to execute stipulation of revivor as required by the agreement

ON WHOM PROCESS WAS SERVED:
The Corporation Trust Incorporated, Baltimore, MD

DATE AND HOUR OF SERVICE:
By Certified Mail on 01/22/2013 postmarked on 01/15/2013

JURISDICTION SERVED:
Maryland

APPEARANCE OR ANSWER DUE:
Within 21 days from date of service, exclusive of the date of service – Answer

ATTORNEY(S)/SENDER(S):
Deron A. Anilker
Duggan, Shadwick, Doerr & Kurlbaum, P.C.
11040 Oakmont
Overland Park, KS 66210
913-498-3536

ACTION ITEMS:
SOP Papers with Transmittal, via Fed Ex 2 Day, 794574981761
Email Notification, Annie McCrory
annie.mccrory@americold.com

SIGNED:
PER:
The Corporation Trust Incorporated
Billie Swoboda

ADDRESS:
351 West Camden Street
Baltimore, MD 21201

TELEPHONE:
410-539-2837

[Legal – /s/ D Deckbar 1/23/13]

Page 1 of 1 / SK

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nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

IN THE DISTRICT COURT OF
JOHNSON COUNTY
CIVIL COURT DEPARTMENT

CONAGRA FOODS, INC. F/K/A CONAGRA, INC.,	
Plaintiffs,	**Case No. 12CV1428**
v.	**Court No. 3**
AMERICOLD LOGISTICS, LLC,	**K.S.A. Chapter 60**
Defendants.	

SUMMONS

To the Defendant: **Americold Realty Trust**
c/o The Corporation Trust Incorporated
351 West Camden Street
Baltimore, MD 21201

You are hereby notified that an action has been commenced against you in this court. You are required

to file your answer to the Petition with this court and serve a copy upon the plaintiff's attorney as follows:

Deron A. Anliker
Duggan, Shadwick, Doerr & Kurlbaum, P.C.
11040 Oakmont
Overland Park, Kansas 66210
(913) 498-3536

within twenty-one (21) days after service of this summons upon you, exclusive of the day of service.

If you fail to do so, judgment by default will be taken against you for the relief demanded in the attached petition. As provided in subsection (a) of K.S.A. 60-213, and amendments thereto, your answer must state as a counterclaim any related claim which you may have against the plaintiff, or you will thereafter be barred from making such claim in any other action.

KATHLEEN M. COLLINS

(Seal)

Clerk of the District Court

Dated: 9-25-12

By /s/ [Illegible]

IN THE DISTRICT COURT OF
WYANDOTTE COUNTY, KANSAS
CIVIL DIVISION

CONAGRA FOODS, INC. F/K/A CONAGRA, INC.	)	
and	)	
SWIFT-ECKRICH, INC.	)	Case No. 12CV1428
and	)	DIV#3
KRAFT FOODSERVICE, INC.	)	
and	)	
SAFEWAY, INC.	)	
and	)	
PHILLIPS CONFECTIONS, INC D/B/A PHILLIPS CONFECTIONS AND HANOVER, INC.	)	
Plaintiffs,	)	
v.	)	
AMERICOLD LOGISTICS, LLC 10 Glenlake Parkway, Ste. 800 Atlanta, Georgia 30328 Serve: The Corporation Company 112 SW 7th Street, Ste. 3C Topeka, Kansas 66603	)	
and	)	
AMERICOLD REALTY TRUST	)	
Defendants.	)	

PETITION

(Filed Sep. 24, 2012)

Plaintiffs ConAgra Foods, Inc. f/k/a ConAgra, Inc. ("ConAgra"), Swift-Eckrich, Inc. ("Swift"), Safeway, Inc. ("Safeway"), Phillips Confections, Inc. d/b/a Phillips Confections and Hanover, Inc. ("Hanover"), and Kraft Foodservice, Inc. ("Kraft") for their Complaint against AmeriCold Logistics, LLC ("Logistics") and Americold Realty Trust (collectively "Americold"), state:

1. ConAgra is a Delaware corporation with its principal place of business in Nebraska.

2. Swift is a Delaware corporation with its principal place of business in Illinois.

3. Safeway is a Delaware corporation with its principal place of business in California.

4. Hanover is a Delaware corporation with its principal place of business in Massachusetts.

5. Kraft is Delaware corporation with its principal place of business in Illinois.

6. Logistics is a Delaware corporation with its principal place of business in Georgia and Americold Realty Trust is a Maryland real estate investment trust. Logistics and Americold Realty Trust are collectively referred to herein as "Americold".

7. Defendant is subject to this jurisdiction of this Court by transacting business in the state of

Kansas and because the transactions and events giving rise to the claims in this action occurred in the state of Kansas.

8. Venue is proper in this Court because a substantial part of the transactions and/or events giving rise to the claims in this action occurred in this judicial district.

Allegations Common to All Counts

9. On December 28, 1991, a fire was detected in Portal A of the underground storage facility (the "Facility") owned and operated by Americold Corporation.

10. Beginning in April 1992, various lawsuits were filed against Americold Corporation as a result of the fire at the Facility and eventually consolidated in both federal and state court.

11. The state court action styled *Associated Wholesale Grocers et al v. Americold Corporation, et al*, Case No. 92C4015 was pending in the District Court of Wyandotte County, Kansas ("the "Kansas Action").

12. On February 9, 1994, the state court and the United States District Court ordered the parties to participate in settlement conferences with federal magistrate Ronald Newman.

13. The first two days of the court-ordered settlement conferences took place on February 18 and

19, 1994, and the second session of the settlement conference commenced on March 8, 1994.

14. At the March 8, 1994 session, Plaintiffs herein and others[1] offered to settle for $40.75 million.

15. On March 10, 1994, a settlement was reached between Plaintiffs and Americold Corporation.

16. The settlement provided for the entry of a consent judgment in favor of the plaintiffs in the Kansas Action in the amount of $58,670,754.00[2] and a covenant not to execute by the plaintiffs in the Kansas Action on the personal assets of Americold Corporation.

17. The settlement agreement was completed in the summer of 1994 and included an assignment by Americold Corporation to Plaintiffs of Americold Corporation's right to seek recovery of insurance policy proceeds and amounts in excess of policy limits from excess carriers including Northwestern Pacific Indemnity Company ("NPIC"). A true and accurate

---

[1] Additional plaintiffs were also involved in the Kansas Action and included Fleming, Inc., Arkwright Mutual Insurance Company, Doskocil Companies, Inc. for itself and as assignee of Industrial Risk Insurers and Wilson Foods Corporation.

[2] The settlement agreement's figure ($58,754,574.00) differs from the amount of the consent judgment in that Hartford Fire Insurance Company, whose claim was $83,820.00, opted not to pursue recovery and was not a party to the Kansas Action. The total claims of all plaintiffs who entered into the settlement agreement were $67 million.

copy of the settlement agreement ("Agreement") is attached hereto as Exhibit 1.

18. Pursuant to the Agreement, Americold Corporation agreed to "execute any additional documents necessary to effectuate the purpose and intent of this Agreement or to pursue the assigned claims or execute on the judgments obtained by Plaintiffs."

19. On March 15, 1994, NPIC filed a declaratory judgment action in the District Court of Johnson County, Kansas against Americold and the plaintiffs in the Kansas Action. The action sought a declaration that (1) the NPIC policy provided no coverage; (2) NPIC had no duty to defend or indemnify Americold for the pending lease claims; and (3) if any coverage existed, it was excess to any coverage available to Americold under the tenant liability policies. .

20. On April 12, 1994, NPIC filed an amended petition for declaratory judgment in the District Court of Johnson County, Kansas.

21. In September 1994, after consent judgments were entered in favor of plaintiffs in the Kansas Action and against Americold in the total amount of $58,670,754.00, plaintiffs in the Kansas Action commenced garnishment proceedings against NPIC and TIG Insurance Company ("TIG").

22. A judgment was entered in favor of ConAgra and Swift in the District Court of Wyandotte County, Kansas on September 8, 1994 in the amount of $7,386,142.00.

23. A judgment was entered in favor of Safeway in the District Court of Wyandotte County, Kansas on August 17, 1994 in the amount of $5,283,027.00.

24. A judgment was entered in favor of Hanover in the District Court of Wyandotte County, Kansas on August 25, 1994 in the amount of $143,876.00.

25. A judgment was entered in favor of Kraft in the District Court of Wyandotte County, Kansas on August 17, 1994 in the amount of $4,930,373.00.

26. NPIC served its answer to the garnishment action on or about October 27, 1994.

27. Plaintiffs each filed a separate Reply to NPIC's and TIG's garnishment answers denying the allegations set forth in said garnishment answers and setting forth the Plaintiffs' contentions and theories of recovery against NPIC and TIG.

28. In June 1995, after discovery closed in the garnishment proceeding, plaintiffs in the Kansas Action moved for summary judgment. NPIC, in turn, filed four separate summary judgment motions claiming: (1) the absolute pollution exclusion precluded coverage; (2) the settlement agreement between Americold and Defendants, entered into without NPIC's consent, violated the NPIC policy provisions; (3) NPIC is not liable over the $25 million policy limit; and (4) the tenants' liability insurance is primary to NPIC's coverage.

29. In support of its motions and in response to Defendants' motions, NPIC filed six (6) separate

briefs (of over 130 pages) and 54 exhibits (of over 900 pages). The district court also held a full day hearing on June 2, 1995 on the motions for summary judgment.

30. On September 20, 1995, the district court in the Kansas Action entered judgments in favor of the plaintiffs in the Kansas Action and against NPIC and TIG in the amount of $58,670,754.00 plus interest. The district court held that NPIC was liable for the first $25 million (its policy limits), and that NPIC and TIG were jointly and severally liable for all amounts above policy limits.

31. On October 12, 1995, the district court filed a journal entry clarifying its September 20, 1995 journal entry by listing the exact dollar amounts owed by NPIC and TIG to each plaintiff in the Kansas Action.

32. NPIC and TIG appealed the district court's decision to the Supreme Court of Kansas. However, after filing its appellate brief, TIG settled with plaintiffs for its policy limits of $15 million and dismissed its appeal. NPIC thereafter settled claims asserted by Arkwright Mutual Insurance Company, the Doskocil Companies, and Wilson Foods.

33. On appeal, the Supreme Court of Kansas identified the following issues: (1) does the absolute pollution exclusion in the NPIC policy apply to eliminate coverage for plaintiffs' claims; (2) did plaintiffs carry their burden of proof that their damages resulted from an "occurrence" within the NPIC policy and

that the "other insurance" provision in the NPIC policy was satisfied; (3) is NPIC bound by the $58,670,754.00 settlement agreement reached by Americold and plaintiffs or, on summary judgment, do material issues of fact remain as to the reasonableness and good faith of the agreement; (4) did the district court improperly impose bad faith liability on NPIC for damages above policy limits; and (5) did the district court improperly increase the amount of the judgment after entering summary judgment against NPIC?

34. On March 7, 1997, the Supreme Court of Kansas issued its decision holding that: (1) the absolute pollution exclusion in the NPIC policy does not exclude coverage; (2) the occurrence issue was not advanced in the district court and is not properly before the court on appeal, and NPIC failed to raise any material issues of fact regarding the application of other insurance; and (3) material issues of fact remained regarding the (a) reasonableness of the policy limits settlement offer, (b) the reasonableness of the Americold settlement agreement, and (3) NPIC's bad faith liability in denying coverage and refusing to settle within policy limits.

35. The Supreme Court of Kansas affirmed in part, reversed in part, and remanded the case to the district court.

36. Following the remand, NPIC filed a motion to convert the garnishment action into a breach of contact action on May 20, 1997 and engaged new

counsel, Cozen and O'Connor. Defendants opposed the admission of Cozen and O'Connor because an implied attorney client relationship existed between the Defendants herein and a member of Cozen and O'Connor.

37. The district court granted the Plaintiffs' motion for disqualification, and NPIC appealed the decision. NPIC sought and obtained a stay of discovery in the Kansas Action pending resolution of the appeal. On March 5, 1999, the Supreme Court of Kansas reversed the district court's decision disqualifying the firm of Cozen and O'Connor from representing NPIC in the Kansas Action.

38. NPIC then filed a motion for change of judge pursuant to K.S.A. 20-311d (a) on April 22, 1999. The district court denied NPIC's motion. The Supreme Court of Kansas assigned Judge David J. King, Chief Judge of the 1st Judicial District of Kansas, to consider the affidavit of disqualification filed by NPIC.

39. On July 28, 1999, Judge King in his Order Determining Sufficiency of Affidavit of Disqualification, Pursuant to K.S.A. 20-311d ruled that the affidavit of disqualification was legally insufficient and therefore, NPIC's request to disqualify Judge Sieve was denied.

40. After NPIC's request to disqualify Judge Sieve was resolved, the district court heard oral argument on NPIC's motion to convert the garnishment action

into a breach of contract action. The district court denied NPIC's motion.

41. The Kansas Action ultimately proceeded to trial and a ten-week bench trial was conducted with Judge Sieve of the District Court of Wyandotte County, Kansas in the fall of 2005. The trial commenced on September 12, 2005 and concluded on November 15, 2005.

42. On the last day of the ten-week trial, NPIC sought to dismiss the garnishment proceedings on the grounds that the district court lacked subject matter jurisdiction to conduct the garnishment proceedings because the consent judgments had become dormant and extinct pursuant to K.S.A. 60-2403 and 60-2404.

43. On January 19, 2006, the district court entered its journal entry denying NPIC's motion to dismiss the garnishment proceedings and ultimately entered a journal entry on February 16, 2007 setting forth the district court's findings of fact and conclusions of law and principally finding that the settlement agreement between the Plaintiffs and Americold Corporation represented a reasonable settlement and that NPIC's denial of coverage and refusal to participate in the settlement conferences and refusal to settle within policy limits were in bad faith.

44. On or about August 27, 2007, separate journal entries of judgment were entered against NPIC.

45. On or about August 27, 2007, a journal entry of judgment was entered in favor of ConAgra and Swift and against NPIC in the amount of $14,930,626.66 plus post-judgment interest until the judgment is satisfied.

46. On or about August 27, 2007, a journal entry of judgment was entered in favor of Safeway and against NPIC in the amount of $12,235,150.84 plus post-judgment interest until the judgment is satisfied.

47. On or about August 27, 2007, a journal entry of judgment was entered in favor of Kraft and against NPIC in the amount of $8,365,478.77 plus post-judgment interest until the judgment is satisfied.

48. On or about August 27, 2007, a journal entry of judgment was entered in favor of Hanover and against NPIC in the amount of $250,823.21 plus post-judgment interest until the judgment is satisfied.

49. NPIC filed a notice of appeal with the Kansas Court of Appeals and the appeal was transferred to the Kansas Supreme Court.

50. On December 23, 2011, almost 3 years after oral argument was held before the Kansas Supreme Court, the Kansas Supreme Court issued its opinion, with two justices in dissent, ruling that "the underlying judgments against Americold were extinguished pursuant to K.S.A. 60-2403, thus depriving the

district court of jurisdiction to proceed with this garnishment action."

51. The Kansas Supreme Court reversed the district court and remanded the matter to the district court to dismiss without prejudice the garnishment proceedings.

52. The Kansas Supreme Court did "not reach[ ] the merits of NPIC's issues of bad faith or the reasonableness of Americold's settlement."

53. On June 20, 2012, the District Court of Wyandotte County entered its journal entry dismissing the garnishment action without prejudice and vacating the judgments entered on [sic] favor of Plaintiffs and against NPIC.

54. On or about December 31, 2002, at 11:58 p.m., Americold Corporation, an Oregon corporation, merged with and into Americold Corporation of Maryland, Inc., a Maryland corporation, with Americold Corporation of Maryland Inc. the surviving corporation. (*See* Certified Plan and Agreement of Merger from the Office of Secretary of State of the State of Oregon for Americold Corporation merging with and into Americold Corporation of Maryland, Inc. attached hereto as Exhibit 2; *See also* Certified Articles of Merger from the State of Maryland merging Americold Corporation into Americold Corporation of Maryland, Inc. attached hereto as Exhibit 3.)

55. Thereafter, on or about December 31, 2002, at 11:59 p.m., Americold Corporation of Maryland,

Inc., a Maryland corporation merged with and into Americold Realty Trust, a Maryland real estate investment trust, with Americold Realty Trust the surviving entity. (*See* Certified Articles of Merger from the State of Maryland merging Americold Corporation of Maryland, Inc. into Americold Realty Trust attached hereto as Exhibit 4.)

56. On or about November 4, 2004, Americold Realty Trust purchased AmeriCold Logistics, and AmeriCold Logistics became a wholly owned subsidiary of Americold Realty Trust.

57. AmeriCold Logistics, LLC, as wholly owned subsidiary of Americold Realty Trust, is the legal successor to Americold Corporation.

58. The parties' intent has been and is that the judgments of the Plaintiffs recited in paragraphs 45 through 48 were to remain in full force and effect until such time as the assets of Americold Corporation in the possession of Northwestern Pacific Indemnity Company were adjudicated and fully collected pursuant to collection proceedings in the State of Kansas.

59. Pursuant to the Agreement, Plaintiffs made demand on AmeriCold Logistics, LLC to execute Stipulations of Revivor consistent with K.S.A. 60-2404, but AmericCold [sic] Logistics, LLC refused and continues to refuse to execute Stipulations of Revivor as required by the Agreement.

COUNT I

(Breach of Contract – Specific Performance)

60. Plaintiffs incorporate the allegations continued in paragraphs 1 through 59 as if fully set forth herein.

61. Plaintiffs and Americold Corporation entered into the Agreement.

62. Plaintiffs performed under the terms of the Agreement.

63. Pursuant to the Agreement, Americold Corporation agreed to "execute any additional documents necessary to effectuate the purpose and intent of this Agreement or to pursue the assigned claims or execute on the judgments obtained by Plaintiffs."

64. AmeriCold Logistics, LLC, as wholly owned subsidiary of Americold Realty Trust, is the legal successor to Americold Corporation.

65. Pursuant to the Agreement, Plaintiffs made demand on Americold to execute Stipulations of Revivor consistent with K.S.A. 60-2404, but Americold refused and continues to refuse to perform under the terms of the Agreement by refusing to execute Stipulations of Revivor as required by the Agreement.

66. Americold is in breach of the Agreement.

67. Americold's failure to perform under the Agreement has resulted in irreparable harm to the Plaintiffs for which no adequate remedy at law exists.

68. The Plaintiffs are entitled to specific performance of the Agreement by Americold.

WHEREFORE, Plaintiffs pray this Court for its order directing Defendants AmeriCold Logistics, LLC and Americold Realty Trust to perform specifically AmeriCold Logistics, LLC's and Americold Realty Trust's obligations under the Agreement by signing Stipulations of Revivor concerning Plaintiffs' judgments entered in 1994; and for such other and further relief as this Court deems just and proper.

COUNT II
(Breach of Contract)
(ConAgra/Swift)

69. Plaintiffs incorporate the allegations continued in paragraphs 1 through 68 as if fully set forth herein.

70. Plaintiffs ConAgra and Swift and Americold Corporation entered into Agreement.

71. AmeriCold Logistics, LLC, as wholly owned subsidiary of Americold Realty Trust, is the legal successor to Americold Corporation.

72. Pursuant to the Agreement, Plaintiffs made demand on Americold to execute Stipulations of Revivor consistent with K.S.A. 60-2404, but Americold refused and continues to refuse to perform under the terms of the Agreement by refusing to execute Stipulations of Revivor as required by the Agreement.

73. Plaintiffs ConAgra and Swift performed and are prepared to perform under the Agreement.

74. Americold is in breach of the Agreement.

75. Americold's breach of the Agreement has resulted in damages to Plaintiffs ConAgra and Swift.

WHEREFORE, Plaintiffs ConAgra Foods, Inc. and Swift-Eckrich, Inc. pray this Court enter judgment in favor of said Plaintiffs and against Defendants AmeriCold Logistics, LLC and Americold Realty Trust, and each of them, in the amount of $14,930,626.66; for prejudgment and post-judgment interest as provided by law; for said Plaintiffs' costs and expenses incurred herein; and for any and all other relief that this Court deems just and proper.

COUNT III
(Breach of Contract)
(Safeway)

76. Plaintiffs incorporate the allegations continued in paragraphs 1 through 75 as if fully set forth herein.

77. Plaintiff Safeway and Americold Corporation entered into Agreement.

78. AmeriCold Logistics, LLC, as wholly owned subsidiary of Americold Realty Trust, is the legal successor to Americold Corporation.

79. Pursuant to the Agreement, Plaintiff Safeway made demand on Americold to execute a Stipulation

of Revivor consistent with K.S.A. 60-2404, but Americold refused and continues to refuse to perform under the terms of the Agreement by refusing to execute a Stipulation of Revivor as required by the Agreement.

80. Plaintiff Safeway performed and is prepared to perform under the Agreement.

81. Americold is in breach of the Agreement.

82. Americold's breach of the Agreement has resulted in damages to Plaintiff Safeway.

WHEREFORE, Plaintiff Safeway, Inc. prays this Court enter judgment in favor of said Plaintiff and against Defendant AmeriCold Logistics, LLC and Americold Realty Trust, and each of them, in the amount of $12,235,150.84; for prejudgment and post-judgment interest as provided by law; for said Plaintiff's costs and expenses incurred herein; and for any and all other relief that this Court deems just and proper.

COUNT IV
(Breach of Contract)
(Kraft)

83. Plaintiffs incorporate the allegations continued in paragraphs 1 through 82 as if fully set forth herein.

84. Plaintiff Kraft and Americold Corporation entered into Agreement.

85. AmeriCold Logistics, LLC, as wholly owned subsidiary of Americold Realty Trust, is the legal successor to Americold Corporation.

86. Pursuant to the Agreement, Plaintiff Kraft made demand on Americold to execute a Stipulation of Revivor consistent with K.S.A. 60-2404, but Americold refused and continues to refuse to perform under the terms of the Agreement by refusing to execute a Stipulation of Revivor as required by the Agreement.

87. Plaintiff Kraft performed and is prepared to perform under the Agreement.

88. Americold is in breach of the Agreement.

89. Americold's breach of the Agreement has resulted in damages to Plaintiff Kraft.

WHEREFORE, Plaintiff Kraft Foodservice, Inc. prays this Court enter judgment in favor of said Plaintiff and against Defendants AmeriCold Logistics, LLC and Americold Realty Trust, and each of them, in the amount of $8,365,478.77; for prejudgment and post-judgment interest as provided by law; for said Plaintiff's costs and expenses incurred herein; and for any and all other relief that this Court deems just and proper.

COUNT V
(Breach of Contract)
(Phillips Confections/Hanover)

90. Plaintiffs incorporate the allegations continued in paragraphs 1 through 89 as if fully set forth herein.

91. Plaintiff Hanover and Americold Corporation entered into Agreement.

92. AmeriCold Logistics, LLC, as wholly owned subsidiary of Americold Realty Trust, is the legal successor to Americold Corporation.

93. Pursuant to the Agreement, Plaintiff Hanover made demand on Americold to execute a Stipulation of Revivor consistent with K.S.A. 60-2404, but Americold refused and continues to refuse to perform under the terms of the Agreement by refusing to execute a Stipulation of Revivor as required by the Agreement.

94. Plaintiff Hanover performed and is prepared to perform under the Agreement.

95. Americold is in breach of the Agreement.

96. Americold's breach of the Agreement has resulted in damages to Plaintiff Hanover.

WHEREFORE, Plaintiff Phillips Confections, Inc. d/b/a Phillips Confections and Hanover, Inc. prays this Court enter judgment in favor of said Plaintiff and against Defendants AmeriCold Logistics, LLC and Americold Realty Trust, and each of them, in the amount of $250,823.21; for prejudgment

and post-judgment interest as provided by law; for said Plaintiff's costs and expenses incurred herein; and for any and all other relief that this Court deems just and proper.

COUNT VI

(Breach of the Duty of Good Faith and Fair Dealing)

97. Plaintiffs incorporate the allegations continued in paragraphs 1 through 96 as if fully set forth herein.

98. Plaintiffs entered into the Agreement with Americold.

99. AmeriCold Logistics, LLC, as wholly owned subsidiary of Americold Realty Trust, is the legal successor to Americold Corporation.

100. In connection with the Agreement, Americold had a duty to act in good faith and deal fairly in the performance and enforcement of all said agreements.

101. Americold [sic] the duty of good faith and fair dealing by refusing to execute the Stipulations of Revivor.

102. As a direct result of Americold's breach of the duty of good faith and fair dealing, the Plaintiffs have been damaged.

WHEREFORE, Plaintiffs ConAgra, Inc., Swift-Eckrich, Inc., Safeway, Inc., Kraft Foodservice, Inc., and Phillips Confections, Inc. d/b/a Phillips Confections

and Hanover, Inc. pray this Court enter judgment in favor of said Plaintiffs and against Defendants AmeriCold Logistics, LLC and Americold Realty Trust, and each of them, as follows: (1) judgment for ConAgra and Swift in the amount of $14,930,626.66; (2) judgment for Safeway in the amount of $12,235,150.84; (3) judgment for Kraft in the amount of $8,365,478.77; (4) judgment for Hanover in the amount of $250,823.21; for prejudgment and post judgment interest as provided by law on each of these judgments; for said Plaintiffs' costs and expenses incurred herein; and for any and all other relief that this Court deems just and proper.

COUNT VII
(Promissory Estoppel)

103. Plaintiffs incorporate the allegations continued in paragraphs 1 through 102 as if fully set forth herein.

104. As set out above, Plaintiffs and Americold reached an agreement which had clear and definitive terms requiring the cooperation of Americold in connection with the judgments entered in favor of Plaintiffs.

105. Plaintiffs reasonably relied upon Americold Corporation's representations that the agreement was reached.

106. AmeriCold Logistics, LLC, as wholly owned subsidiary of Americold Realty Trust, is the legal successor to Americold Corporation.

107. The equities support the enforcement of the agreement.

108. Plaintiffs will suffer damages and an injustice will result if Americold Corporation's representations and promises are not enforced and Americold is allowed to repudiate those representations and promises to Plaintiffs.

WHEREFORE, Plaintiffs ConAgra, Inc., Swift-Eckrich, Inc., Safeway, Inc., Kraft Foodservice, Inc., and Phillips Confections, Inc. d/b/ a Phillips Confections and Hanover, Inc. pray this Court enter judgment in favor of said Plaintiffs and against Defendants AmeriCold Logistics, LLC and Americold Realty Trust, and each of them, as follows: (1) judgment for ConAgra and Swift in the amount of $14,930,626.66; (2) judgment for Safeway in the amount of $12,235,150.84; (3) judgment for Kraft in the amount of $8,365,478.77; (4) judgment for Hanover in the amount of $250,823.21; for prejudgment and post-judgment interest as provided by law on each of these judgments; for said Plaintiffs' costs and expenses incurred herein; and for any and all other relief that this Court deems just and proper.

COUNT VIII
(Equitable Estoppel)

109. Plaintiffs incorporate the allegations continued in paragraphs 1 through 108 as if fully set forth herein.

110. Americold Corporation represented to Plaintiffs that Americold Corporation intended to cooperate with Plaintiffs in connection with the judgments entered in favor of Plaintiffs.

111. AmeriCold Logistics, LLC, as wholly owned subsidiary of Americold Realty Trust, is the legal successor to Americold Corporation.

112. Through these representations, Americold Corporation induced Plaintiffs to enter into the settlement agreement and to forbear pursuing action against Americold Corporation.

113. Americold now claims that it may refuse to cooperate with Plaintiffs in connection with the judgments entered in favor of Plaintiffs.

114. Americold is equitably stopped from making such representations and then seeking to renege on promises made.

115. Plaintiffs must be awarded damages to avoid the injustice which will result if Americold is allowed to repudiate its representations to Plaintiffs.

WHEREFORE, Plaintiffs ConAgra, Inc., Swift-Eckrich, Inc., Safeway, Inc., Kraft Foodservice, Inc., and Phillips Confections, Inc. d/b/a Phillips Confections and Hanover, Inc. pray this Court enter judgment in favor of said Plaintiffs and against Defendants AmeriCold Logistics, LLC and Americold Realty Trust, and each of them, as follows: (1) judgment for ConAgra and Swift in the amount of $14,930,626.66; (2) judgment for Safeway in the

amount of $12,235,150.84; (3) judgment for Kraft in the amount of $8,365,478.77; (4) judgment for Hanover in the amount of $250,823.21; for prejudgment and post-judgment interest as provided by law on each of these judgments; for said Plaintiffs' costs and expenses incurred herein; and for any and all other relief that this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial on all issues so triable.

Respectfully submitted,

DUGGAN, SHADWICK, DOERR
& KURLBAUM
A Professional Corporation

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EXHIBIT

1

1. AGREEMENT

1.0 This Agreement is made as of March 10, 1994, by the parties identified in this Agreement as "Plaintiffs" and "Americold." This Agreement reflects an agreement between each individual plaintiff and Americold and does not, unless specifically stated, set forth an agreement between or among the plaintiffs. The Agreement between Americold and each plaintiff is complete upon execution of this document by Americold and that particular plaintiff and does not require that every party identified in this Agreement execute the Agreement.

2. PARTIES

2.0 The parties to this Agreement are

2.1 Americold Corporation and Americold Services Corporation, referred to in this Agreement as "Americold";

2.2 Tenants of Americold's Kansas City, Kansas warehouse facility (Americold Facility) and their respective subrogating property insurers, identified as "Plaintiffs" when not specifically identified. Plaintiffs include parties with lease agreements directly with Americold, parties whose property was stored in space leased to others or in areas of the warehouse which Americold did not operate as public storage space and the respective subrogating insurers of

those parties. Plaintiffs specifically include the following parties:

Arkwright Mutual Insurance Company

Commerce & Industry Insurance Company

ConAgra, Inc. and Swift-Eckrich, Inc.

Doskocil companies, Inc. and Wilson Foods Corporation

Fleming Foods, Inc.

General Accident Insurance Company of America

Hanover Insurance Company

Hartford Casualty Insurance Company

Hartford Fire Insurance Company as a representative and member of IRI

Institute of London Underwriters

Kraft Foodservice, Inc.

Phillips Confections, Inc.

QHC, Inc.

Safeway, Inc.

3. DEFINITIONS

3.0 "Americold Facility" means the Americold Warehouse Facility located at 6500 Inland Drive, Kansas City, Kansas.

3.1 "1991 Fire" means the fire that was discovered at the Americold Facility on December 28, 1991.

3.2 "Tenant Claims" means claims asserted by parties or their subrogated property insurers arising out of damage to property stored in leased areas of the Americold Facility.

3.3 "Customer Claims" means claims asserted by parties or their subrogated property insurers arising out of damage to property stored in public storage areas of the Americold Facility pursuant to Warehouse receipts or record storage agreements.

4. SUBJECT MATTER AND SCOPE OF SETTLEMENT

4.0 Plaintiffs have Tenant Claims against Americold arising out of or relating to the 1991 Fire at the Americold Facility. The Parties intend to resolve Tenant Claims against Americold as those claims are set forth in the following lawsuits:

Associated Wholesale Grocers, et al. v. Americold Corporation, et al, District Court of Wyandotte County, Kansas, Case No. 92 C 4015;

Fleming Companies, Inc., et al. v. Americold Corporation, et al. United States District Court for the District of Kansas, Case No. 92-2375, removed from the District Court of Wyandotte County, Kansas, Civil Department, Case No. 92C4040.

Food Barn Stores, Inc. v. Americold Corporation, Americold Services Corporation, Americold. Inc. and Safeway, Inc.; In The United States District

Court for the District of Kansas; Case No. 93-2024-JWL (Consolidated With 92-2188 et al) removed from the District Court of Wyandotte County, Kansas Civil Court Department; Case No. 92C05247;

Hartford Casualty Insurance Company and QHC, Inc. v. Americold Corporation et al, United States District Court for the District of Kansas, Case No. 93-2067;

Hartford Casualty Insurance Company and QHC, Inc. v. Americold Corporation, Americold Services Corporation, Americold, Inc. and Safeway. Inc.; In The United States District Court for the District of Kansas; Case no. 93-2067-JWL (Consolidated with Case Nos. 92-2118, et al.);

Kraft Foodservice, Inc., et al. v. Americold Services, et al., District Court of Wyandotte County, Kansas, Case No. 93 C 1030;

Marcus Phillips d/b/a Phillips Confections, et al. v. Americold Corporation, et al., United States District Court for the District of Kansas, Case No. 93-2540;

Real Food Marketing Company, Inc. v. Americold Corporation, Americold Services Corporation, Americold, Inc. and Safeway, Inc.; In The District Court of Wyandotte County Kansas Civil Court Department; Case No. 93C2120, Chapter 60;

Starting Right, et al. v. Americold Corporation, Americold Services Corporation, Americold, Inc. and Safeway, Inc.; In The United States District Court for the District of Kansas; Case no. 92-2458-JWL (Consolidated with Case No. 92-2118

et al) removed from The District Court of Wyandotte County Civil Court Department; Case No. 92C03570);

Swift-Eckrich, Inc., et al. v. Americold Corporation, et al., District Court of Wyandotte County, Kansas, Case No. 92 C 4033.

4.1 This Agreement does not address or resolve Customer claims made in the above cases against Americold by parties to this Agreement. In this Agreement, Plaintiffs are only settling their Tenant Claims.

4.2 Americold and Plaintiffs agree that this Agreement reflects a reasonable, good faith effort to resolve the dispute between them. Nothing in this Agreement shall be construed as an admission of liability by Americold with respect to claims asserted against it or by Plaintiffs with respect to counterclaims asserted against them by Americold.

5. REPRESENTATIONS BY AMERICOLD

5.0 Americold makes the following representations:

5.1 Substantially all of Americold's assets are held as collateral by Americold's secured creditors and Americold's indebtedness to its secured creditors exceeds the value of all Americold assets by at least $50 million.

5.2 All Americold facilities, except facilities in Portland, Maine, Burbank, California and Tampa,

Florida are encumbered and the value of the facilities at these three locations is approximately less than five percent (5%) of the total assets of Americold.

5.3 Americold does not have any policy of insurance which provides coverage for Tenant Claims other than the policies set forth in Section 7 of this Agreement.

5.4 Americold will make its employees available for deposition without subpoena or process, will provide all documents, not privileged, regarding the acquisition of the insurance identified in Section 7 of this Agreement and will provide all communications, not privileged, to and from the insurance companies identified in Section 7. Plaintiffs will pay the travel and hotel expenses, if any, in making Americold's employees available.

5.5 There are no facts giving rise to defenses to coverage arising from the acts or omissions of Americold in contracting for insurance or otherwise other than as alleged in the letters of counsel for Northwestern Pacific Indemnity Company to Americold on February 16, 1994 and April 11, 1994, and letters from TIG Insurance Company or as alleged in the declaratory judgment action filed by Northwestern Pacific Indemnity Company against Americold and others on March 15, 1994, and amended on April 11, 1994, and such information as obtained by Plaintiffs in due diligence investigation.

6. SETTLEMENT DEMAND

6.0 As a group, Plaintiffs' total claims against Americold are approximately $67 million. Plaintiffs assert that their provable damages at trial would be approximately $67 million.

6.1 Americold has shown to Plaintiffs that its 1991 general liability coverage, available to respond to the claims of tenants and their subrogating property insurers, has aggregate limits of $41 million. Americold represents to Plaintiffs that it has a negative net worth and that Americold is now an operating corporation, capable of servicing its debt load, but a judgment not covered by insurance or in excess of its insurance limits would make it unable to service its debt, trigger default provisions in the debt instruments on its secured assets, and jeopardize the viability of the company.

6.2 Plaintiffs assert that the merits of their case against Americold and the measure of their provable damages would result in a judgment far in excess of $41 million. Given Americold's financial condition, Plaintiffs submitted a demand to Americold to settle all claims of Americold's tenants and their respective subrogating property insurers for $40,750,000.00. Americold represents and agrees that this demand was within its 1991 insurance policy limits and was a reasonable demand given the merits of the case, Americold's review and evaluation of damages being sought, the risks faced by Americold at trial and the potential jeopardy to Americold's viability from a

judgment exceeding insurance limits, as more extensively described in Paragraph 6.1.

6.3 Americold represents that it demanded, on a timely basis, that its 1991 insurance carriers settle Plaintiffs' claims within the carriers' policy limits, but Americold's excess carriers, Northwestern Pacific Indemnity Company and TransAmerica Insurance Company, refused to settle Plaintiffs' claims against Americold or to defend Americold except under a reservation of rights.

7. AMERICOLD'S LIABILITY INSURANCE POLICIES

7.0 For the period January 1, 1991, through December 31, 1991, Americold represents that the following insurers provided comprehensive general liability insurance coverage to Americold:

Company	Policy No.	Policy Limit
National Union Fire Insurance Company	GL249-89-87	$1 million
Northwestern Pacific Indemnity	(92) 7907-09-49	$25 million
TransAmerica Insurance Company	XLX1213680	$15 million

7.1 For the period January 1, 1992, to January 1, 1993, Americold represents that the following companies provided general liability insurance coverage to Americold:

Company	Policy No.	Policy Limit
National Union Fire Insurance Company	RMGL249-99-14	$2 million
New Hampshire Insurance Company	32006171	$23 million
TransAmerica Insurance Company	XLX2757963	$16 million

8. ASSIGNMENT OF AMERICOLD'S CLAIMS AGAINST ITS LIABILITY INSURERS

8.0 In order to settle Plaintiffs' Tenant Claims against Americold, despite the failure of Americold's excess carriers, Northwestern Pacific Indemnity and TransAmerica Insurance Company, to defend or settle Plaintiffs' claims within their policy limits, Americold hereby assigns to Plaintiffs all of its claims against Northwestern Pacific Indemnity Insurance Company and TransAmerica Insurance Company under its respective policies with those companies, including its claims for bad faith refusal to defend or to settle claims within policy limits and for statutory damages under Kansas law awarding attorneys' fees for failure to pay without just cause or excuse.

8.1 Americold hereby also assigns to Plaintiffs all rights and claims under its 1992 policies with National Union Fire Insurance Company, New Hampshire Insurance Company, and TransAmerica for claims based on occurrences, if any, which occurred after January 1, 1992. Americold represents and has maintained throughout this litigation that

the 1991 fire was the only occurrence and does not concede or admit by this assignment that there were any occurrences after January 1, 1992.

9. ASSIGNMENT OF OTHER CLAIMS

9.0 As part of this Settlement Agreement, Americold hereby assigns to Plaintiffs all its claims arising out of or relating to Americold's purchase of insurance, against all insurance brokers, agents, and/or producers, hereinafter collectively referred to as brokers, specifically including, but not limited to claims against Oland International and Rollins Hudig Hall of Oregon, Inc., with respect to procuring insurance coverage in 1991 and 1992. Plaintiffs agree that they will not file a lawsuit against Americold's brokers based on this assignment before or until any of the following three events take place:

(1) Either of the 1991 excess carriers, Northwestern Pacific and TransAmerica assert that an act or omission of the broker prevented Americold from having excess liability coverage in 1991 for damages caused by the December 28, 1991, fire; or

(2) Either of the excess carriers, Northwestern Pacific and TransAmerica obtain a court ruling that their policies do not provide coverage for the December 28, 1991, fire; or

(3) Claims against brokers are governed by a statute of limitations that will expire within thirty (30) days.

9.1 Americold hereby assigns to Plaintiffs all breach of contract claims it may have against Return, Inc. Plaintiffs agree that they will only file a lawsuit or assert crossclaims against Return, Inc. based on this assigned claim in responding to allegations made by Americold's 1991 excess liability carriers that Return, Inc. was responsible for providing any amount or layer of liability coverage for Americold in 1991.

10. OWNERSHIP OF ASSIGNED CLAIMS

10.0 Americold makes all assignments herein to the Plaintiffs both jointly and individually to the extent of their respective Tenant Claims against Americold. With these assignments, Plaintiffs may, jointly or individually, pursue and resolve the assigned claims.

11. SETTLEMENT AMOUNT

11.0 Plaintiffs and Americold agree as follows:

11.1 Based on the merits of the claims and defenses and the measure of damages in this matter, it is fair and reasonable to assume that had this matter proceeded to trial, Plaintiffs could obtain judgments in excess of $41 million;

11.2 Although Americold is a viable company, which, at present, is capable of servicing its debt, a judgment in excess of liability insurance would trigger default provisions in debt instruments secured by

Americold's assets, and threaten the viability of the company.

11.3 As additional consideration for Americold's agreement to settle and in recognition of Americold's interest in protecting its personal assets Plaintiffs agree that they will seek to satisfy their judgments against Americold by execution, garnishment or otherwise as provided by law against the liability insurers identified in this Agreement. Plaintiffs covenant not to execute on other Americold assets, with the specific exception that Plaintiffs may pursue claims assigned to them by Americold in Sections 8 and 9 of this Agreement.

11.4 To protect itself from the risks of trial, including a judgment exceeding its policy limits, Americold agrees to settle the Tenant Claims for a total amount $58,754,574.00. Americold and Plaintiffs agree that this amount is a fair and reasonable compromise reflecting the merits of claims and defenses in the case, the evaluation of damages, the risks of trial and probability of collection.

12. ENTRY OF JUDGMENT

12.0 Americold agrees that Plaintiffs may present this settlement Agreement in the courts in which their lawsuits are pending and obtain final judgments against Americold for their separate Tenant Claims with the total amount of the judgments not exceeding $58,754,574.00.

12.1 Plaintiffs and Americold agree that Plaintiffs will obtain the following separate final judgments as part of this settlement:

Name of Party	Amount of Judgment	Court
Arkwright Mutual Insurance Company	$20,466,087.00	Wyandotte County
ConAgra, Inc. and Swift-Eckrich, Inc.	$ 7,386,142.00	Wyandotte County
Hartford Casualty Insurance Company and QHC, as their interests appear	$ 83,820.00	U.S. District
Hartford Fire Insurance Insurance Company for IRI; Doskocil Companies, Inc. and Wilson Foods Corporation as their interests appear	$ 6,421,104.00	Wyandotte County
Kraft Foodservice, Inc.	$ 4,930,373.00	Wyandotte County
Safeway, Inc. and General Accident Insurance Company of America as their interests appear	$5,283,027.00	Wyandotte County

Fleming Cos., Inc., Commerce & Industry Insurance Company and Institute of London Underwriters as their interests appear	$14,037,145.00	U.S. District
Marcus Phillips d/b/a Phillips Confections, and Hanover Insurance Company	$ 146,876.00	U.S. District

12.2 Plaintiffs agree that all such judgments shall be deemed simultaneously entered and registered regardless of the actual date and time of entry or registration and no plaintiff will assert any claims of priority or a preferential position against Americold's insurers based upon the timing of entry or registration of such judgments.

12.3 Americold and Plaintiffs agree that each judgment identified in Paragraph 12.1 may be entered pursuant to Federal Rule of Civil Procedure 54(b) or Kansas Rule of Civil Procedure § 60-254(b) after Americold and the party seeking the judgment have signed this Agreement, that there is no just reason for delay and that the Court may expressly direct that judgment be entered on that party's claims.

13. DISMISSAL OF COUNTERCLAIMS

13.0 Americold agrees that it will dismiss, with prejudice, all counterclaims asserted against the

Plaintiffs either in Wyandotte County or U.S. District Court, with the exception of its existing counterclaim against Kraft Foodservice, Inc.

13.1 Further, Americold releases all Plaintiffs from all claims arising out of, relating to or resulting from the 1991 fire, or the Americold Facility, including alleged or actual breaches of plaintiff's lease obligations to obtain liability and property insurance for the benefit or protection of Americold.

14. SETTLEMENT DOCUMENTATION/ IMPLEMENTATION

14.0 The parties agree that this document reflects their entire settlement agreement and that this document may be executed or signed in counterparts.

14.1 Americold agrees that it will make available to Plaintiffs all evidence, not privileged, that relates to Plaintiffs' pursuit of claims assigned in Sections 8 and 9 of this Agreement and will cooperate with Plaintiffs. Americold will execute any additional documents necessary to effectuate the purpose and intent of this Agreement or to pursue the assigned claims or execute on the judgments obtained by Plaintiffs.

14.2 Plaintiffs understand and agree that this Agreement reflects the agreement of each individual Plaintiff with Americold and does not, unless specifically stated, set forth an agreement between or among the Plaintiffs.

14.3 Each party to this Agreement agrees that the person signing the Agreement for that party is fully authorized to sign this Agreement and bind the party to the terms of this Agreement.

RELEASE OF LIEN AND ATTORNEYS REPRESENTATION

I, Paul H. Niewald, of and for Niewald, Waldeck & Brown, attorney for Americold Corporation and Americold Services corporation, have approved this Compromise Agreement and Release and acknowledge that attorney's fees other than those recited in this Agreement and lien therefor, are hereby waived. I have explained to our clients all of the terms of this Agreement and they have represented to us that they fully understand all of the terms thereof and their significance. Our clients have signed this Compromise Agreement and Release of their own free will and upon our advice.

I represent and agree that the amounts of the judgments described in this Agreement are fair and reasonable settlement amounts that fairly and reasonably reflect the merits of the claims and defenses in the case, the evaluation of damages, and the risks of trial.

I represent and agree that the terms of this Agreement are a fair and reasonable compromise of the dispute between the Plaintiffs and Americold and that this Agreement was entered into in good faith by Americold.

Dated this 22nd day of June, 1994.

/s/ Paul H. Niewald
Paul H. Niewald of and for
Niewald, Waldeck & Brown

Dated this 15th day of June, 1994.

AMERICOLD CORPORATION

By /s/ F. Stanley Seva

Its Senior Vice President

Subscribed and sworn to before
me this 15th day of June, 1994.

/s/ Mary Lou Starker [NOTARY SEAL]
Notary Public – State of Oregon

Dated this 15th day of June, 1994.

AMERICOLD SERVICES
CORPORATION

By /s/ F. Stanley Seva

Its Senior Vice President

Subscribed and sworn to before
me this 15th day of June, 1994.

/s/ Mary Lou Starker [NOTARY SEAL]
Notary Public – State of Oregon

Dated this 15th day of June, 1994.

ARKWRIGHT MUTUAL
INSURANCE COMPANY

By /s/ [Illegible]

Its ATTORNEY-IN-FACT

Subscribed and sworn to before
me this 15th day of June, 1994.

/s/ [Illegible]
Notary Public
Alan G. Trebut
My Commission Expires 10/17/97

Dated this 24th day of July, 1994.

COMMERCE & INDUSTRY
INSURANCE COMPANY

By /s/ Walter L. Mooney

Its President

Subscribed and sworn to before
me this 2th day of July, 1994.

/s/ Deirdre A. Higgins
Notary Public

[NOTARY SEAL]

Dated this 25th day of July, 1994.

CONAGRA, INC.

By /s/ C. Wayne Gano Jr.

Its Vice President Insurance & Loss Control

Subscribed and sworn to before me this 25th day of July, 1994.

/s/ Judith A. Poorazk [NOTARY SEAL]
Notary Public

Dated this 26th day of July, 1994.

SWIFT-ECKRICH, INC.

By /s/ [Illegible]

Its Senior Vice President & CEO

Subscribed and sworn to before me this 26th day of July, 1994.

/s/ Susan Kravchuk
Notary Public

[NOTARY SEAL]

Dated this 15th day of June, 1994.

DOSKOCIL COMPANIES, INC.

By /s/ [Illegible]

Its Vice President

Subscribed and sworn to before
me this 15th day of June, 1994.

/s/ Leah J. Martin
Notary Public [NOTARY SEAL]

Dated this 15th day of June, 1994.

WILSON FOODS CORPORATION

By /s/ [Illegible]

Its Vice President

Subscribed and sworn to before
me this 15th day of June, 1994.

/s/ Leah J. Martin
Notary Public [NOTARY SEAL]

Dated this 19th day of July, 1994.

FLEMING FOODS, INC.
[Fleming Corporation, Inc.]

By /s/ George M. Ward

Its Claim/Litigation Manager

Subscribed and sworn to before
me this 19th day of July, 1994.

/s/ Carol A. Ford
Notary Public

Dated this 27th day of June, 1994.

GENERAL ACCIDENT
INSURANCE COMPANY
OF AMERICA

By /s/ [Illegible]

Its Recovery Manager

Subscribed and sworn to before
me this 28 day of June, 1994.

/s/ Patricia K. Cole
Notary Public

[NOTARY SEAL]

Dated this 19th day of July, 1994.

HANOVER INSURANCE COMPANY

By /s/ [Illegible]

Its Claim Manager

Subscribed and sworn to before
me this 19th day of July, 1994.

/s/ Elizabeth P. Shirley
Notary Public [NOTARY SEAL]

Dated this 19th day of July, 1994.

HARTFORD CASUALTY
INSURANCE COMPANY

By /s/ Janise L. Johnson

Its Claim Representative

Subscribed and sworn to before
me this 19th day of July, 1994.

/s/ Dianne Jacobs
Notary Public [NOTARY SEAL]

Dated this 14 day of June, 1994.

HARTFORD FIRE INSURANCE
COMPANY AS A REPRESENTATIVE
AND MEMBER OF IRI

By /s/ [Illegible]

Its ATTORNEY-IN-FACT

Subscribed and sworn to before
me this 14th day of June, 1994.

/s/ [Illegible]
Notary Public

INSURANCE COMPANIES,
MEMBERS OF INSTITUTE OF
LONDON UNDERWRITERS

Subscribing to Policy Number: 4H1
By: /s/ [Illegible]

Title: CLAIMS ADJUSTER

LONDON
ENGLAND

Before me this day appeared, Alan Cairns who after first being duly sworn, confirmed that he is the Claims Adjuster, AXA Marine & Aviation Insurance (UK) Limited Member Company of Institute of London

Underwriters and that he is duly authorised to enter into this Release and Settlement Agreement.

Subscribed and sworn to before me, this 21st day of July, 1994

/s/ John Fisher
John Fisher
Solicitor of the Supreme Court of England and Wales, Partner of Clyde & Co.

My Commission Expires:

_____

CLYDE & CO.
51 EASTCHEAP
LONDON EC3M 1JP

Dated this 20th day of June, 1994.

KRAFT FOODSERVICE, INC.

By /s/ David E. Hieber

Its Senior Manager Insurance & Claims Administrator

Subscribed and sworn to before me this 20th day of June, 1994.

/s/ Loretta D. Gatewood
Notary Public

[NOTARY SEAL]

Dated this 27 day of July, 1994.

MARCUS PHILLIPS
d/b/a PHILLIPS CONFECTIONS

By /s/ Marcus D. Phillips

Its Managing Partner

Subscribed and sworn to before
me this 27th day of July, 1994.

/s/ Michelle J. O'Leary
Notary Public

[NOTARY SEAL]

Dated this 19th day of July, 1994.

QHC, INC.

By /s/ [Illegible]

Its V.P.

[NOTARY SEAL]

Subscribed and sworn to before
me this 19th day of July, 1994.

/s/ Colleen A. Harris
Notary Public

Dated this 15th day of July, 1994.

SAFEWAY, INC.

By /s/ [Illegible]

Its Vice President

Subscribed and sworn to before
me this 15th day of July, 1994.

/s/ G. Gonzales
Notary Public [NOTARY SEAL]

EXHIBIT 2

CERTIFICATE

State of Oregon

OFFICE OF THE SECRETARY OF STATE
Corporation Division

I, BILL BRADBURY, Secretary of State of Oregon, and Custodian of the Seal of said State, do hereby certify:

That the attached copy of the
Articles of
Merger
filed on
December 27, 2002
with a stated effective date of ***January 1, 2003***
for
AMERICOLD CORPORATION
merging with and into
AMERICOLD CORPORATION OF MARYLAND INC
is a true copy of the original document that has been filed with this office.

In Testimony Whereof, I have hereunto set my hand and affixed hereto the Seal of the State of Oregon.

[SEAL] *BILL BRADBURY, Secretary of State*

By /s/ Debra L. Virag
Debra L. Virag
September 13, 2006

[SEAL] Phone: (503) 986-2200
Fax: (503) 378-4381

[Illegible]
Articles of Merger

Secretary of State
Corporation Division
255 Capitol St. NE,
Suite 151
Salem, OR 97310-1327
FilinginOregon.com

Check the appropriate box below:

☒ MULTI ENTITY MERGER
(Complete only 1, 2, 3, 4, 10, 11)

☐ FOR PARENT AND 90% OWNED SUBSIDIARY WITHOUT SHAREHOLDER APPROVAL
(Complete only 5, 6, 7, 8, 9, 10, 11)

SURVIVOR
REGISTRY NUMBER: 034685-19

(Filed Dec. 27, 2002)

In keeping with Oregon Statute 192.410-192.595, the information on the application is public record. We must release this information to all parties upon request and it may be posted on our website.

For office use only

Please Type or Print Legibly in Black Ink. Attach Additional Sheet if Necessary.

1) NAMES AND TYPES OF THE ENTITIES PROPOSING TO MERGE

NAME	TYPE	REGISTRY NUMBER
Americold Corporation	Oregon corporation	034685-19
Americold Corporation of Maryland, Inc.	Maryland corporation	N/A

2) NAME AND TYPE OF THE SURVIVING ENTITY AMERICOLD CORPORATION OF MARYLAND, INC., A MARYLAND CORPORATION

☐ Check here if there is a name change in this plan of merger.

3) A COPY OF THE MERGER PLAN IS ATTACHED.

4) THE PLAN OF MERGER WAS DULY AUTHORIZED AND APPROVED BY EACH ENTITY THAT IS A PARTY TO THE MERGER.

☒ A copy of the vote required by each entity is attached

FOR PARENT AND 90% OWNED SUBSIDIARY WITHOUT SHAREHOLDER APPROVAL

5) NAME OF PARENT CORPORATION _____

Oregon Registry Number _____

6) NAME OF SUBSIDIARY CORPORATION _____

Oregon Registry Number _____

7) NAME OF SURVIVING CORPORATION _____

8) COPY OF PLAN

☐ A copy of the plan of merger setting forth the manner and basis of converting shares of the subsidiary into shares, obligations, or other securities of the parent corporation or any other corporation or into cash or other property is attached.

9) CHECK THE APPROPRIATE BOX

☐ A copy of the plan of merger or summary was mailed to each shareholder of record of the subsidiary corporation on or before _____
Date

☐ The mailing of a copy of the plan or summary was waived by all outstanding shares.

---

10) EXECUTION

Printed Name	Signature	Title
Jonathan C. Daiker	/s/ J.C. Daiker	Senior Vice President

---

11) CONTACT NAME (To resolve questions with this filing.)

Guanming Fang

DAYTIME PHONE NUMBER (Include area code.)

404-873-7018

FEES
Required Processing Fee $20 – Processing Fees are nonrefundable. Please make check payable to "Corporation Division." NOTE: Fees may be paid with VISA or Master Card The card number and expiration date should be submitted on a separate sheet for your protection

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PLAN AND AGREEMENT OF MERGER
OF
AMERICOLD CORPORATION
with and into
AMERICOLD CORPORATION
OF MARYLAND, INC.

I.

NAMES

The names of the entities planning to merge are AMERICOLD CORPORATION, a corporation for profit organized under the laws of the State of Oregon ("*Americold*") and AMERICOLD CORPORATION OF MARYLAND, INC., a corporation for profit organized under the laws of the State of Maryland ("*Americold-MD*").

II.

MERGER

Americold and Americold-MD shall, pursuant to the provisions of the Oregon Business Corporation

Act (the "*Oregon Act*") and the Maryland General Corporation Law (the "*MGCL*"), be merged (the "*Merger*") with and into a single corporation, to wit, Americold-MD, which shall be the surviving corporation when the merger takes effect (the "*Effective Time*") and which is sometimes hereinafter referred to as the "*Surviving Corporation*", and which shall continue to exist as the Surviving Corporation pursuant to the provisions of the MGCL. The separate existence of Americold, which is sometimes hereinafter referred to as the "*Terminating Corporation*", shall cease as of the Effective Time of the Merger in accordance with the provisions of the Oregon Act.

III.
ARTICLES OF INCORPORATION

The Articles of Incorporation of the Surviving Corporation (the "*Articles of Incorporation*") as in effect immediately before the Effective Time of the Merger shall be the Articles of Incorporation of the Surviving Corporation and shall continue to be the Articles of Incorporation of the Surviving Corporation until thereafter amended as provided by law.

IV.
BYLAWS

The Bylaws of the Surviving Corporation as in effect immediately before the Effective Time of the Merger shall be the Bylaws of the Surviving Corporation and shall continue to be the Bylaws of the Surviving Corporation until thereafter amended as

provided by law, the Articles of Incorporation of the Surviving Corporation or such Bylaws.

V.
DIRECTORS AND OFFICERS

The directors and officers of the Surviving Corporation in office immediately before the Effective Time of the Merger shall continue to be the directors and officers of the Surviving Corporation, all of whom shall hold their directorships and offices until the election and qualification of their respective successors or until their tenure is otherwise terminated by law or in accordance with the Bylaws of the Surviving Corporation.

VI.
SHARES

At the Effective Time (as defined herein), by virtue of the Merger and without any action on the part of the holder thereof, each share of common stock of Americold, par value $.01 per share ("Americold Common Stock"), issued and outstanding immediately prior to the Effective Time shall be converted into the right to receive one validly issued, fully paid and nonassessable share of common stock of Americold-MD, par value $.01 per share ("Americold-MD Common Stock"), and each share of preferred stock of Americold, par value $.01 per share ("Americold Preferred Stock"), issued and outstanding immediately prior to the Effective Time shall be

converted into the right to receive one validly issued, fully paid and nonassessable share of preferred stock of Americold-MD, par value $.01 per share ("Americold-MD Preferred Stock").

At the Effective Time, all issued and outstanding Americold Common Stock converted into the right to receive Americold-MD Common Stock pursuant to this Agreement shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist, and each holder of a certificate or other right representing any such Americold Common Stock shall cease to have any rights with respect thereto, except the right to receive Americold-MD Common Stock in accordance with this Agreement upon surrender of such certificate or other right.

At the Effective Time, all issued and outstanding Americold Preferred Stock converted into the right to receive Americold-MD Preferred Stock pursuant to this Agreement shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist, and each holder of a certificate or other right representing any such Americold Preferred Stock shall cease to have any rights with respect thereto, except the right to receive Americold-MD Preferred Stock in accordance with this Agreement upon surrender of such certificate or other right.

The Americold-MD Common Stock issued and outstanding immediately prior to the Effective Time shall automatically be cancelled and retired and shall

cease to exist, and no consideration shall be delivered or deliverable in exchange therefor.

[SEAL] Phone: (503) 986-2200
Fax: (503) 378-4381

Articles/Certificate of Correction – All Entities

Secretary of State
Corporation Division
255 Capitol St. NE,
Suite 151
Salem, OR 97310-1327
FilinginOregon.com

(Filed Dec. 30, 2002)

REGISTRY NUMBER: 034685-19

In keeping with Oregon Statute 192.410-192.595, the information on the application is public record. We must release this information to all parties upon request and it may be posted on our website. For office use only

Please Type or Print Legibly in Black Ink. Attach Additional Sheet if Necessary.

1) NAME of Entity Americold Corporation

NOTE: The Change of Registered Agent or Office form must be used to change the registered agent.

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2) DOCUMENT DESCRIPTION (Describe the document to be corrected, including the date on which it was filed, or attach a copy of the document to be corrected.)

Articles of Merger and Plan and Agreement of Merger, filed on 12/27/02 (see attached)

3) INCORRECT STATEMENT (Describe the incorrect statement and indicate the reason it is incorrect.)

The Plan and Agreement of Merger states that the Merger shall take effect as of 12:01 a.m. January 1, 2003. The effective time of the merger should have been 11:58 p.m. December 31, 2003.

4) CORRECTION (The incorrect statement is corrected to read as follows. Attach additional sheets if necessary.)

The Merger shall take effect as of 11:58 p.m. on December 31, 2002 (the "Effective Time") (see attached Amendment to Plan and Agreement of Merger)

5) EXECUTION

Printed Name	Signature
Jonathan C. Daiker	/s/ J.C. Daiker
Title	Date
Senior V.P and CFO	12/30/02

6) CONTACT NAME (To resolve questions with this filing.)

Guanming Fang

DAYTIME PHONE NUMBER (Include area code.)

404-873-7018

FEES
Required Processing Fee $20 – Processing Fees are nonrefundable. Please make check payable to "Corporation Division." NOTE: Fees may be paid with VISA or Master Card The card number and expiration date should be submitted on a separate sheet for your protection

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AMENDMENT TO PLAN OF MERGER

This AMENDMENT TO PLAN OF MERGER (the "*Amendment*"), is entered into this 30th day of December, 2002, by and between AMERICOLD CORPORATION, a corporation for profit organized under the laws of the State of Oregon ("*Americold*") and AMERICOLD CORPORATION OF MARYLAND, INC., a corporation for profit organized under the laws of the State of Maryland ("Americold-MD").

WITNESSETH:

WHEREAS, the parties have entered into that certain Plan and Agreement of Merger dated December

24, 2002 (the "*Plan*"), which Plan was filed with the Secretary of State of the State of Oregon on December 27, 2002, together with the Articles of Merger between the parties; and

WHEREAS, the parties desire [sic] amend the Plan as provided herein.

NOW, THEREFORE, for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Section VII of the Plan shall be deleted in its entirety and shall be replaced with the following:

"VII.
EFFECTIVE TIME OF MERGER

The Merger shall take effect as of 11:58 p.m. on December 31, 2002 (the "Effective Time")."

2. Except as specifically amended as set forth herein, the terms, conditions, and provisions of the Plan shall remain unaltered and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed as of the date first above set forth.

AMERICOLD CORPORATION,
an Oregon corporation

By: /s/ J.C. Daiker
Jonathan C. Daiker,
Senior Vice President
and CFO

AMERICOLD CORPORATION OF MARYLAND, INC., a Maryland corporation

By: /s/ J.C. Daiker
Jonathan C. Daiker,
Senior Vice President
and CFO

CUST ID: 0001029364
WORK ORDER: 0000582022
DATE: 12-31-2002 12:02 PM
AMT. PAID: $101.00

EXHIBIT 3

STATE OF MARYLAND

I hereby certify that this is a true and complete copy of the 5 page document on file in this office. DATED: 9-19-06.

STATE DEPARTMENT OF
ASSESSMENTS AND TAXATION

BY: /s/ Alexander [Illegible], custodian

This stamp replaces our previous certification system. Effective: 6/95

ARTICLES OF MERGER

Merging
AMERICOLD CORPORATION,
a Corporation of the State of Oregon

Into
AMERICOLD CORPORATION OF MARYLAND, INC.,
a Corporation of the State of Maryland

FIRST: Americold Corporation, a corporation organized and existing under the laws of the State of Oregon ("*Americold*"), and Americold Corporation of Maryland, Inc., a corporation organized and existing under the laws of the State of Maryland ("*Americold-MD*"), agree that Americold shall be merged (the "Merger") into Americold-MD. The terms and conditions of the Merger and the mode carrying the same into effect are as herein set forth in these Articles of Merger.

SECOND: Americold-MD shall survive the Merger and shall continue under the name "Americold Corporation of Maryland, Inc." Americold-MD is formed under the laws of the State of Maryland.

THIRD: The parties to the Articles of Merger are Americold and Americold-MD. Americold was incorporated on the 13th day of February, 1931 under the general laws of the Oregon Business Corporation Act (the "*Oregon Act*"), which corporation is not registered or qualified to do business in the State of Maryland.

FOURTH: The total number of shares of stock of all classes which Americold has authority to issue is One Thousand Seven Hundred (1,700) shares divided into One Thousand (1,000) shares of common stock, par value $.01 per share ("Americold Common Stock"), and Seven Hundred (700) shares of preferred

stock, par value $.01 per share ("Americold Preferred Stock"). The aggregate par value of all shares of all classes of stock with par value of Americold is $17.00.

The total number of shares of stock of all classes which Americold-MD has authority to issue is One Thousand Seven Hundred (1,700) shares divided into One Thousand (1,000) shares of common stock, par value $.01 per share ("Americold-MD Common Stock"), and Seven Hundred (700) shares of preferred stock, par value $.01 per share ("Americold-MD Preferred Stock"). The aggregate par value of all shares of all classes of stock with par value of Americold-MD is $17.00.

FIFTH: Upon the Effective Time (as defined herein), Americold shall be merged into Americold-MD. Thereupon, Americold-MD shall possess any and all purposes and powers of Americold; and all leases, licenses, property, rights, privileges, and powers of whatever nature and description of Americold shall be transferred to, vested in, and devolved upon Americold-MD, without further act or deed, subject to all of the debts, liabilities and obligations of Americold.

SIXTH: At the Effective Time, by virtue of the Merger and without any action on the part of the holder thereof, each share of Americold Common Stock issued and outstanding immediately prior to the Effective Time shall be converted into the right to receive one validly issued, fully paid and nonassessable share of Americold-MD Common Stock, and each share of Americold Preferred Stock issued and outstanding

immediately prior to the Effective Time shall be converted into the right to receive one validly issued, fully paid and nonassessable share of Americold-MD Preferred Stock.

At the Effective Time, all issued and outstanding Americold Common Stock converted into the right to receive Americold-MD Common Stock pursuant to this Article shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist, and each holder of a certificate or other right representing any such Americold Common Stock shall cease to have any rights with respect thereto, except the right to receive Americold-MD Common Stock in accordance with this Article upon surrender of such certificate or other right.

At the Effective Time, all issued and outstanding Americold Preferred Stock converted into the right to receive Americold-MD Preferred Stock pursuant to this Article shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist, and each holder of a certificate or other right representing any such Americold Preferred Stock shall cease to have any rights with respect thereto, except the right to receive Americold-MD Preferred Stock in accordance with this Article upon surrender of such certificate or other right.

The Americold-MD Common Stock issued and outstanding immediately prior to the Effective Time shall automatically be cancelled and retired and shall cease to exist, and no consideration shall be delivered

or deliverable in exchange therefor. There are no shares of Americold-MD Preferred Stock issued and outstanding immediately prior to the Effective Time.

SEVENTH: The principal office of Americold-MD is located at 300 East Lombard Street, City of Baltimore, State of Maryland. Americold does not have a principal office in the State of Maryland. Neither Americold, nor Americold-MD, has any interest in land in the State of Maryland.

EIGHTH: The terms and conditions of the transaction described in these Articles of Merger were duly advised, authorized and approved by Americold-MD in the manner and by the vote required by its charter and the laws of the State of Maryland, as follows: A Plan and Agreement of Merger, setting forth the terms and conditions of the Merger was (a) duly advised by the board of directors of Americold-MD by the adoption, on December 24, 2002, of a written consent, declaring that the Merger herein proposed was advisable substantially upon the terms and conditions set forth in these Articles of Merger and directing that the proposed Articles of Merger be submitted for action thereon by the stockholders of Americold-MD, and (b) duly approved by the stockholders of Americold-MD by unanimous written consent of all shares entitled to vote on the matter.

NINTH: The terms and conditions of the transaction described in these Articles of Merger were duly advised, authorized and approved by Americold in the manner and by the vote required by its charter and

the laws of the State of Oregon, as follows: A Plan and Agreement of Merger, setting forth the terms and conditions of the Merger was (a) duly advised by the board of directors of Americold by the adoption, on December 24, 2002, of a written consent, declaring that the Merger herein proposed was advisable substantially upon the terms and conditions set forth in these Articles of Merger and directing that the proposed Articles of Merger be submitted for action thereon by the shareholders of Americold, and (b) duly approved by the shareholders of Americold by unanimous written consent of all shares entitled to vote on the matter.

TENTH: The Merger shall become effective as of 11:58 p.m. on December 31, 2002 (the "Effective Time").

ELEVENTH: Each undersigned President or Vice President, as the case may be, acknowledges these Articles of Merger to be the act of the respective entity on whose behalf he has signed, and further, as to all matters or facts required to be verified under oath, each undersigned President or Vice President acknowledges that to the best of his knowledge, information and belief, these matters and facts relating to the entity on whose behalf he has signed are true in all material respects and that this statement is made under the penalties for perjury.

[Signatures on the following page]

IN WITNESS WHEREOF, Americold and Americold-MD, the corporations parties to the Merger, have

caused these Articles of Merger to be signed in their respective corporate names and on their behalf by their respective presidents or vice-presidents and witnessed or attested by their respective secretaries or assistant secretaries all as of the 24th day of December, 2002.

AMERICOLD CORPORATION,
an Oregon corporation

By: /s/ J. C. Daiker
Name: Jonathan C. Daiker
Its: Senior Vice President

Attest: (Witness:)

/s/ Tony Worland
Secretary

AMERICOLD CORPORATION OF MARYLAND, INC.,
a Maryland corporation

By: /s/ J. C. Daiker
Name: Jonathan C. Daiker
Its: Senior Vice President

Attest: (Witness:)

/s/ Tony Worland
Secretary

CORPORATE CHARTER APPROVAL SHEET
**** EXPEDITED SERVICE ****
**** KEEP WITH DOCUMENT ****

DOCUMENT CODE 11

BUSINESS CODE ___

_____

Close _____ Stock _____

Nonstock ____ P.A. ____

Religious ____

Merging (~~Transferor~~)
Americold Corporation
_____
_____
_____

Surviving (~~Transferee~~)
Americold Corporation
of Maryland, Inc.
D07101629

[BAR CODE]
1000351987843889

ID # D07101629
ACK # 1000361987843889
LIBER: B00462
FOLIO: 0974
PAGES: 0005
AMERICOLD
CORPORATION OF
MARYLAND, INC.
12/31/2002 AT 11:02 A
WO # 0000682022

New Name _____

FEES REMITTED

Base Fee:	20
Org. & Cap. Fee:	
Expedite Fee:	70
Penalty:	
State Recordation Tax:	
State Transfer Tax:	
1 Certified Copies Copy Fee:	11
____ Certificates Certificate of Status Fee:	

Personal Property Filings: _____
Other: _____
TOTAL FEES: 101

_____ Change of Name
_____ Change of Principal Office
_____ Change of Resident Agent
_____ Change of Resident Agent Address
_____ Resignation of Resident Agent
_____ Designation of Resident Agent and Resident Agent's Address
_____ Change of Business Code

_____

_____ Adoption of Assumed Name

_____

_____

_____ Other Change(s)

_____

_____

Code 193

Credit Card ___ Check ___ Attention: ABL

Cash ___

___ Documents on __ Checks Mail to Address:

Approved By: 9 _____

Keyed By: _____ _____

COMMENTS:

[File 3rd Note effective time]

CUST ID:0001029364
WORK ORDER: 0000682022
DATE: 12-31-2002 12:02 PM
AMT. PAID: $101.00

Stamp Work Order and
Customer Number HERE

EXHIBIT 4

STATE OF MARYLAND

I hereby certify that this is a true and complete copy of the 5 page document on file in this office.
DATED: 9-19-06.

STATE DEPARTMENT OF
ASSESSMENTS AND TAXATION

BY: /s/ Alexander [Illegible], custodian

This stamp replaces our previous certification system. Effective: 6/95

ARTICLES OF MERGER

Merging
AMERICOLD CORPORATION OF MARYLAND, INC.,
a Corporation of the State of Maryland

Into
AMERICOLD REALTY TRUST,
a Real Estate Investment Trust of the
State of Maryland

Pursuant to Sections 3-102, 3-107, 3-109, and 8-501.1 of the Maryland Corporations and Associations Article of the Annotated Code of Maryland, the undersigned submit the following for filing:

1. Americold Corporation of Maryland, Inc., a Maryland corporation (*"Americold"*), and Americold Realty Trust, a Maryland real estate investment trust (the *"Trust"*), hereby agree to merge (the *"Merger"*) as set forth in these Articles of Merger.

2. The name and place of incorporation or organization of each corporation and real estate investment trust party to the Merger are as follows:

Name	Place of Organization
Americold Corporation of Maryland, Inc.	Maryland
Americold Realty Trust	Maryland

3. The entity surviving the Merger is Americold Realty Trust, a real estate investment trust organized under, and governed by, the laws of the State of Maryland.

4. The county in Maryland where Americold or the Trust has its principal office is as follows:

Name	County
Americold Corporation of Maryland, Inc.	City of Baltimore
Americold Realty Trust	City of Baltimore

5. Neither Americold, nor the Trust, owns any interest in land in the State of Maryland.

6. The terms and conditions of the transaction described in these Articles of Merger were duly advised, authorized and approved by Americold in the manner and by the vote required by its charter and the laws of the State of Maryland, as follows: An Agreement and Plan of Merger setting forth the terms and conditions for the Merger provided herein was (a) duly advised by the Board of Directors of Americold by unanimous written consent, declaring that the Merger herein proposed was advisable substantially upon the terms and conditions set forth in these Articles of Merger and directing that the proposed Articles of Merger be submitted for action thereon by the sole stockholder of Americold, and (ii) duly approved by the sole stockholder holding all of the voting stock of Americold by written consent.

7. The terms and conditions of the transaction described in these Articles of Merger were duly advised, authorized and approved by the Trust in the manner and by the vote required by its declaration of trust and the laws of the State of Maryland, as follows: An Agreement and Plan of Merger setting forth the terms and conditions for the Merger provided herein was (a) duly advised by the Board of Trustees

of the Trust by unanimous written consent, declaring that the Merger herein proposed was advisable substantially upon the terms and conditions set forth in these Articles of Merger and directing that the proposed Articles of Merger be submitted for action thereon by the sole shareholder of the Trust, and (b) duly approved by the sole shareholder of the Trust by written consent.

8. The Declaration of Trust of the Trust as in effect immediately before the effective time of the Merger shall be the Declaration of Trust of the Trust after the effective time of the Merger and shall continue to be the Declaration of Trust of the Trust until thereafter amended as provided by law.

9. The total number of shares of stock of all classes which Americold has authority to issue is One Thousand Seven Hundred (1,700) shares, divided into (i) One Thousand (1,000) shares of common stock, par value $.01 per share ("Americold Common Stock"), and (ii) Seven Hundred (700) shares of preferred stock, par value $.01 per share ("Americold Preferred Stock"). The aggregate par value of all classes of all shares of stock with par value of Americold is $17.00.

The total number of shares of beneficial interest of all classes which the Trust has authority to issue is One Thousand Seven Hundred (1,700) shares, divided into (i) One Thousand (1,000) common shares of beneficial interest, par value $.01 per share ("Trust Common Shares"), with an aggregate par value of Ten Dollars ($10.00); and (ii) Seven Hundred (700)

preferred shares of beneficial interest, par value $.01 per share ("Trust Preferred Shares"), with an aggregate par value of Seven Dollars ($7.00).

10. Upon the Effective Time (as defined herein), Americold shall be merged into the Trust. Thereupon, the Trust shall possess any and all purposes and powers of Americold; and all leases, licenses, property, rights, privileges, and powers of whatever nature and description of Americold shall be transferred to, vested in, and devolved upon the Trust, without further act or deed, subject to all of the debts, liabilities and obligations of Americold.

11. The Merger shall become effective at 11:59 p.m. on December 31, 2002 (the "Effective Time").

12. At the Effective Time, by virtue of the Merger and without any action on the part of the holder thereof, each share of Americold Common Stock issued and outstanding immediately prior to the Effective Time shall be converted into the right to receive one validly issued, fully paid and nonassessable Trust Common Share, and each share of Americold Preferred Stock issued and outstanding immediately prior to the Effective Time shall be converted into the right to receive one validly issued, fully paid and nonassessable Trust Preferred Share.

At the Effective Time, all issued and outstanding Americold Common Stock converted into the right to receive Trust Common Shares pursuant to this Article shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist,

and each holder of a certificate or other right representing any such Americold Common Stock shall cease to have any rights with respect thereto, except the right to receive Trust Common Shares in accordance with this Article upon surrender of such certificate or other right.

At the Effective Time, all issued and outstanding Americold Preferred Stock converted into the right to receive Trust Preferred Shares pursuant to this Article shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist, and each holder of a certificate or other right representing any such Americold Preferred Stock shall cease to have any rights with respect thereto, except the right to receive Trust Preferred Shares in accordance with this Article upon surrender of such certificate or other right.

The Trust Common Shares issued and outstanding immediately prior to the Effective Time shall automatically be cancelled and retired and shall cease to exist, and no consideration shall be delivered or deliverable in exchange therefor. There are no Trust Preferred Shares issued and outstanding immediately prior to the Effective Time.

13. Each undersigned President or Vice President, as the case may be, acknowledges these Articles of Merger to be the act of the respective entity on whose behalf he has signed, and further, as to all matters or facts required to be verified under oath, each undersigned President or Vice President acknowledges that to the best of his knowledge, information and belief,

these matters and facts relating to the entity on whose behalf he has signed are true in all material respects and that this statement is made under the penalties for perjury,

[Signatures on following page]

IN WITNESS WHEREOF, Americold Corporation of Maryland, Inc. and Americold Realty Trust, the parties to the Merger, have caused these Articles of Merger to be signed in their respective name and on their behalf by their respective authorized officer and witnessed or attested by their respective authorized officer, as of the 27th day of December, 2002.

AMERICOLD CORPORATION OF MARYLAND, INC.,
a Maryland corporation

By: /s/ J. C. Daiker
Name: Jonathan C. Daiker
Its: Senior Vice President

Attest: (Witness:)

/s/ Tony Worland
Secretary

AMERICOLD REALTY TRUST,
a Maryland real estate investment trust

By: /s/ J. C. Daiker
Name: Jonathan C. Daiker
Its: Senior Vice President

Attest: (Witness:)

/s/ Tony Worland
Secretary

CORPORATE CHARTER APPROVAL SHEET
**** EXPEDITED SERVICE ****
**** KEEP WITH DOCUMENT ****

DOCUMENT CODE 11

BUSINESS CODE ___

_____

Close _____ Stock _____

Nonstock ____ P.A. ____

Religious ____

Merging (~~Transferor~~)
Americold Corporation
of Maryland, Inc.
D07101629

_____

Surviving (~~Transferee~~)
Americold Realty Trust
D07146913

_____

[BAR CODE]
1000351987843821

_____

ID # D07146913
ACK # 1000361987843921
LIBER: B00462
FOLIO: 0985
PAGES: 0005
AMERICOLD REALTY TRUST
12/31/2002 AT 11:03 A
WO # 0000682024

New Name _____

_____

_____

FEES REMITTED

Base Fee: 20
Org. & Cap. Fee: _____
Expedite Fee: 70

Penalty: _____
State Recordation Tax: _____
State Transfer Tax: _____
_1_ Certified Copies _____
Copy Fee: 11
____ Certificates _____
Certificate of Status Fee: _____
Personal Property Filings: _____
Other: _____
TOTAL FEES: 101

_____ Change of Name
_____ Change of Principal Office
_____ Change of Resident Agent
_____ Change of Resident Agent Address
_____ Resignation of Resident Agent
_____ Designation of Resident Agent and Resident Agent's Address
_____ Change of Business Code

_____

_____ Adoption of Assumed Name

_____

_____

_____ Other Change(s)

_____

_____

Code 193

Credit Card ___ Check ___ Attention: ABL

Cash ___

___ Documents on __ Checks Mail to Address:

Approved By: 9 _____

Keyed By: _____ _____

COMMENTS:

[File 4th Note effective time]

CUST ID:0001029368
WORK ORDER: 0000682024
DATE: 12-31-2002 12:06 PM
AMT PAID: $101.00

Stamp Work Order and
Customer Number HERE

CERTIFIED MAIL

[BAR CODE] [POSTAGE]
7010 3090 0002 6980 7211

Duggan, Shadwick, Doerr & Kurlbaum, PC
11040 Oakmont
Overland Park, Kansas 66210

Americold Logistics, LLC
c/o The Corporation Company
112 SW 7th Street, Ste. 3C
Topeka, Kansas 66603

EXHIBIT B

IN THE DISTRICT COURT OF
WYANDOTTE COUNTY, KANSAS
CIVIL DIVISION

CONAGRA FOODS, INC. F/K/A CONAGRA, INC. and SWIFT-ECKRICH, INC. and KRAFT FOODSERVICE, INC. and SAFEWAY, INC. and PHILLIPS CONNECTIONS, INC. D/B/A PHILLIPS CONNECTIONS AND HANOVER, INC. Plaintiffs, v. AMERICOLD LOGISTICS, LLC and AMERICOLD REALTY TRUST Defendants.	Case No. 12-CV-1428 Division 3

DEFENDANTS' NOTICE OF FILING NOTICE OF REMOVAL

PLEASE TAKE NOTICE that on February 7, 2013, Defendants filed with the United States District

Court for the District of Kansas, their Notice of Removal pursuant to 28 U.S.C. § 1441, a copy of which is attached, thereby removing this action from the District Court of Wyandotte County, Kansas, to the United States District Court for the District of Kansas.

Respectfully submitted,

EDGAR LAW FIRM LLC

/s/ Michael D. Pospisil
Michael D. Pospisil KS # 18540
John M. Edgar KS FED #70270
Edgar Law Firm LLC
1032 Pennsylvania Ave.
Kansas City, Missouri 64105
Telephone: (816) 531-0033
Facsimile: (816) 531-3322
Email: jme@edgarlawfirm.com
Email: mdp@edgarlawfirm.com
ATTORNEYS FOR DEFENDANTS

[Certificate Of Service Omitted]

NO. 13-3277

IN THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

CONAGRA FOODS, INC. F/K/A CONAGRA, INC., et al.,

Plaintiffs-Appellants,

v.

AMERICOLD LOGISTICS, LLC, et al.,

Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS
The Honorable John W. Lungstrum District Judge
District Court Case No. 2:13-cv-02064-JWL/KGS

RESPONSE BRIEF OF APPELLANTS CONAGRA FOODS, INC. F/K/A CONAGRA, INC. and SWIFT-ECKRICH, INC.

(Filed Oct. 24, 2014)

John M. Duggan, KS# 14053
Deron A. Anliker, KS# 16877
Andrew I. Spitsnogle, KS# 25788
Duggan Shadwick Doerr & Kurlbaum LLC
11040 Oakmont Street
Overland Park, Kansas 66210
(913) 498-3536
Attorneys for Appellants

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[4] ARGUMENT

This Court's October 7, 2014, Order requested supplemental briefing addressing the following questions:

> 1. Was the Defendants' Notice of Removal sufficient to establish diversity jurisdiction in that the Notice did not establish the citizenship of the beneficial shareholders or beneficiaries of the Americold Realty Trust?
>
> 2. If the Notice of Removal did not establish diversity jurisdiction, what curative facts, if any, may the appellee aver to correct this defect in this appeal?

October 7, 2014, Order at 1-2.

Appellees' Supplemental Brief, filed on October 17, 2014, concludes that the Americold Realty Trust's

citizenship is determined by the citizenship of its trustees. Supplemental Brief of Appellees Americold Logistics, LLC and Americold Realty Trust ("Appellees' Supplemental Brief") at 1-6. Appellee asserts that any deficiency in the Notice of Removal for failing to allege the citizenship of the trustees under the Americold Realty Trust is cured because the Supplemental Brief offers evidence as to the citizenship of the trustees. *Id.* at 1.

Appellants concur with Appellees' conclusion that diversity jurisdiction exists. If the Notice of Removal was not sufficient to establish diversity jurisdiction through the trustees' citizenship, any defective allegations of jurisdiction may be amended in this Court. 28 U.S.C. § 1653.

[5] Appellants also agree that the presence of the three District Court plaintiffs,[1] who are not parties to this appeal, does not impact this Court's diversity jurisdiction. However, if the Court determines that diversity issues exist, then the Court should take curative action to exercise jurisdiction. This Court's authority to dismiss dispensable nondiverse parties is "well established." The Court should exercise this authority if necessary to avoid dismissal of this action.

---

[1] Kraft Foodservice, Inc. ("Kraft"), Safeway, Inc. ("Safeway"), and Phillips Confections, Inc. d/b/a Phillips Confections and Hanover, Inc. ("Hanover") were plaintiffs in the District Court, but did not join in this appeal.

A. The ability of this Court to dismiss dispensable nondiverse parties to preserve jurisdiction is "well established." Nondiverse parties should be dismissed as dispensable where their dismissal is not prejudicial to any party.

As a general rule, federal jurisdiction is determined based on the facts as they existed at the time the complaint or notice of removal was filed. *Ravenswood Inv. Co., L.P. v. Avalon Corr. Servs.*, 651 F.3d 1219, 1223 (10th Cir. 2011); *Laughlin v. Kmart Corp.*, 50 F.3d 871, 873 (10th Cir. 1995); *see also Herber v. Wal-Mart Stores*, 886 F. Supp. 19, 20 (D. Wyo. 1995) ("[U]nder *Laughlin*, the jurisdictional allegation is determined as of the time of filing the Notice of Removal." (citing *Laughlin*, 50 F.3d 871)).

However, this "time-of-filing" rule has "one well-established exception." *Ravenswood*, 651 F.3d at 1223. Federal courts "can dismiss a dispensable nondiverse party pursuant to Fed. R. Civ. P. 21 to cure a jurisdictional defect at any [6] point in the litigation, including after judgment has entered." *Id.* (citing *Grupo Dataflux v. Atlas Global Grp., L.P.*, 541 U.S. 567, 572, 124 S.Ct. 1920, 1925 (2004)); *Lenon v. St. Paul Mercury Ins. Co.*, 136 F.3d 1365, 1371 (10th Cir. 1998) (approving district court's dismissal of nondiverse trustee to preserve diversity); *see also* Fed. R. Civ. P. 21 ("On motion or on its own, the court may at any time, on just terms, add or drop a party. The court may also sever any claim against a party."). Fed. R. Civ. P. 19(b) lists the following factors for

determining whether a party is indispensable: (1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties; (2) the extent to which any prejudice could be lessened or avoided by protective provisions in the judgment, shaping the relief, or other measures; (3) whether a judgment rendered in the person's absence would be adequate; and (4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder. Fed. R. Civ. P. 19(b).

Courts of appeals have authority to dismiss dispensable nondiverse parties. *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 837, 109 S. Ct. 2218, 2225 (1989); *Ravenswood*, 651 F.3d at 1225 (citing *Newman-Green, Inc.*, 490 U.S. at 827, 109 S. Ct. at 2220). The U.S. Supreme Court in *Newman-Green, Inc. v. Alfonzo-Larrain* noted that this authority "should be exercised sparingly" based on "whether the dismissal of a nondiverse party will prejudice any of the parties in the [7] litigation." 490 U.S. at 838, 109 S. Ct. at 2225. In that case, however, the Court reversed the Seventh Circuit Court of Appeals for failing to dismiss a nondiverse party. *Id.* at 838, 109 S. Ct. at 2226.

There, an Illinois corporation brought claims for, *inter alia*, breach of a guaranty against four Venezuelan citizens and a United States citizen domiciled in Venezuela. *Id.* at 828, 109 S. Ct. at 2220. After several years of discovery and pretrial motions, the District Court entered summary judgment. *Id.* At oral argument before the Seventh Circuit Court of Appeals, the

court questioned the basis for diversity jurisdiction – an issue which had not previously been raised in the case. *Id.* The court determined that diversity jurisdiction was destroyed because one of the four guarantors was "stateless"; *i.e.*, he was a U.S. citizen without a domicile in any State. *Id.* at 829, 109 S. Ct. at 2221. The Seventh Circuit did not dismiss the lawsuit, however. *Id.* at 829-30, 109 S. Ct. at 2221. Instead, the court remanded the case to the district court to determine whether the guarantor should be dismissed as a nondiverse dispensable party under Fed. R. Civ. P. 21. *Id.* at 830, 109 S. Ct. at 2221.

The U.S. Supreme Court reversed the Seventh Circuit and held that the Seventh Circuit should have dismissed the guarantor as a dispensable nondiverse party, instead of remanding to the district court. *Id.* at 826, 837-38, 109 S. Ct. at 2225-26. The Court held that none of the parties would be harmed by dismissal of [8] the "jurisdictional spoiler[]" because (a) discovery directed to the guarantor would have been available to the plaintiff even if the nondiverse guarantor had not been a party; and (b) because all of the guarantors were jointly and severally liable, the only person who faced prejudice was the nondiverse guarantor. *Id.* at 830, 838, 109 S. Ct. at 2221, 2225-26. The *Newman-Green* Court stressed that "requiring dismissal of the suit after years of litigation would impose unnecessary and wasteful burdens on the parties, judges, and other litigants awaiting judicial attention." *Id.* at 827, 109 S. Ct. at 2220.

In *Lenon v. St. Paul Mercury Ins. Co.*, 136 F.3d 1365, this Court affirmed a district court's dismissal of a nondiverse trustee to preserve diversity jurisdiction. 136 F.3d 1365, 1373 (10th Cir. 1998). After concluding that the citizenship of trustees determined the Court's diversity jurisdiction, the Court analyzed the Fed. R. Civ. P. 19(b) factors for determining dispensability. The *Lenon* Court rejected the defendant's argument that it could be prejudiced by the dismissed trustee filing a separate state court action. *Id.* at 1373. "This contention," the Court found, "fails to consider the res judicata effect of a judgment against the trustees, since all trustees would be suing in their representative capacities and almost certainly be found to be in privity with each other." *Id.* The Court found dismissal was proper for the additional reason that the trustee's nondiversity and the issue of whether or [9] not he was indispensable "did not arise until two years after plaintiffs filed their complaint." *Id.* at 1373.

Finally, in *Harris v. Illinois-California Exp., Inc.*, this Court found that a nondiverse passenger's intervention in the driver's personal injury lawsuit against various defendants did not defeat diversity jurisdiction. 687 F.2d 1361, 1369 (10th Cir. 1982). The Court reasoned that while the claims advanced by the driver and passenger arose out of the same vehicle collision and thus had common legal issues and an "identical aggregate core of operative facts," the two parties' claims were "not dependent one on the other and may be maintained independently." *Id.* at 1367.

The *Harris* Court held that the passenger was a dispensable party to the driver's "separate" action such that the passenger's later-asserted claims did not defeat diversity jurisdiction. *Id.* at 1367-69.

B. Here, Appellants and Appellees agree they will not be prejudiced if Safeway and Hanover are dismissed. Moreover, Safeway and Hanover will clearly not be prejudiced because they have elected to not appeal the District Court's judgment. If necessary to preserve diversity, Safeway and Hanover should be dismissed as dispensable nondiverse parties.

In this case, there are seven trustees of the Americold Trust. Exhibit A to Appellees' Supplemental Brief at ¶ 8. Two of these individuals are citizens of Massachusetts and California *Id.* While Safeway and Hanover hold principal places of business in California and Massachusetts, respectively, these parties did not appeal the District Court's judgment. However, even if Safeway and Hanover [10] must be considered for purposes of diversity jurisdiction, this Court should exercise its "well-settled" authority to prevent these dispensable nondiverse parties from "spoiling" diversity jurisdiction.

Dismissal of Safeway and Hanover is proper because Appellants and Appellees agree that no parties will be prejudiced. Appellees' Supplemental

Brief at 8 ("Their [the non-appealing plaintiffs'] absence does not prejudicially affect any remaining party. . ."). Thus, the only remaining question is whether Safeway and Hanover would face any prejudice by being dismissed under Fed. R. Civ. P. 21. Safeway and Hanover cannot be prejudiced by dismissal because they have already elected to not appeal the District Court's judgment. Dismissal to preserve diversity will not impact any remedies available to Safeway and Hanover that they have not already abandoned.

Moreover, Appellants ConAgra and Swift have asserted a separate and distinct breach of contract claim against Appellees. Indeed, the breach of contract claim at issue in this case was pleaded by ConAgra and Swift as a separate count, distinct from Safeway's and Hanover's breach of contract claims. *See* Aplt. App. at A21-A23, A24-A25 (Counts II, III, V). As in *Harris*, Appellants' separate claims involve common issues of law, but are not "dependent" upon the presence of the non-appealing District Court plaintiffs. As such, no party will be prejudiced by dismissal of Safeway and Hanover. Accordingly, no protective provisions need [11] to be fashioned by this Court. The first two factors for dispensing nondiverse parties are met.

The third factor for determining dispensability, which includes public and judicial interests in complete and efficient resolution of disputes, *Lenon*, 136 F.3d at 1373, weighs heavily in favor of preserving diversity. The potential nondiversity of two Americold

trustees did not arise until one year and eight months after Appellees filed their Notice of Removal. Remanding to the District Court or forcing the parties to begin anew "would impose unnecessary and wasteful burdens on the parties, judges, and other litigants awaiting judicial attention." *Newman-Green, Inc.*, 490 U.S. at 827, 109 S. Ct. at 2220. Finally, the fourth factor, the availability of an alternate forum if the action is dismissed, "is not a sufficient reason by itself" for dismissing an action for nonjoinder. *Lenon*, 136 F.3d at 1373 (citing *Rishell v. Jane Phillips Episcopal Mem'l Med. Ctr.*, 94 F.3d 1407, 1413 (10th Cir. 1996)).

If necessary to preserve diversity, this Court should enter its Order dismissing Safeway and Hanover as dispensable parties. Alternatively, this Court has held that trustees may be dismissed as a dispensable nondiverse party to preserve diversity jurisdiction. *Lenon*, 136 F.3d at 1369-73. While not named parties to this case, the Court should disregard the citizenship of the nondiverse, dispensable trustees to preserve diversity jurisdiction if necessary.

[12] CONCLUSION

Appellants and Appellees agree that diversity jurisdiction exists. If, however, this Court determines that diversity issues exist, then the Court should exercise its "well established" authority to dismiss

dispensable nondiverse parties to preserve its diversity jurisdiction.

Respectfully submitted,

DUGGAN SHADWICK DOERR & KURLBAUM LLC

By: /s/ Deron A. Anliker
John M. Duggan, #14053
Deron A. Anliker, #16877
Andrew I. Spitsnogle, #25788
11040 Oakmont Street
Overland Park, Kansas 66210
jduggan@kc-dsdlaw.com
danliker@kc-dsdlaw.com
aspitsnogle@kc-dsdlaw.com
(913) 498-3536
Fax (913) 498-3538
Attorneys for Appellants

[Certificate Of Service Omitted]

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

CONAGRA FOODS, INC., f/k/a Conagra, Inc.; SWIFT-ECKRICH, INC., Plaintiffs-Appellants, and KRAFT FOODSERVICE, INC.; SAFEWAY, INC.; PHILLIPS CONNECTIONS, INC., d/b/a Phillips Connections and Hanover, Inc., Plaintiffs, v. AMERICOLD LOGISTICS, LLC; AMERICOLD REALTY TRUST, Defendants-Appellees.	No. 13-3277 (D.C. No. 2:13-CV-02064-JWL-KGS)

JUDGMENT

(Filed Jan. 27, 2015)

Before **LUCERO**, **MURPHY**, and **MCHUGH**, Circuit Judges.

This case originated in the District of Kansas and was argued by counsel.

The case is remanded to the United States District Court for the District of Kansas for further proceedings in accordance with the opinion of this court.

Entered for the Court

/s/ Elisabeth A. Shumaker
ELISABETH A. SHUMAKER, Clerk

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

October 1, 2015

Clerk
United States Court of Appeals for the Tenth Circuit
Byron White Courthouse
1823 Stout Street
Denver, CO 80257

Re: Americold Logistics, LLC, et al.
v. ConAgra Foods, Inc., et al.
No. 14-1382
(Your No. 13-3277)

Dear Clerk:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is granted.

Sincerely,

/s/ Scott S. Harris
Scott S. Harris, Clerk